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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C. 20240

Secretary of the Interior Cecil D. Andrus

Office of Hearings and Appeals -- David B. Graham, Director

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INDEX-DIGEST

January--December 1978

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1978, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D. C. 20240.

Decisions and opinions cited as appearing in 85 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

Editors: Vera E. Burgin, Betty H. Perry
Compositors: L. Lynne Dillard, Diane M. Garrison
-- 1979

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IA-T -- Indian Appeals -- Tort
IBCA -- Interior Board of Contract Appeals
IBIA -- Interior Board of Indian Appeals
IBLA -- Interior Board of Land Appeals
IBMA -- Interior Board of Mine Operations Appeals
IBSMA -- Interior Board of Surface Mining Appeals
M -- Solicitor's Opinion
OHA -- Office of Hearings and Appeals
SEC -- Office of the Secretary

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Phil Baker v. Department of the Interior, No. 77-1973, United States Ct. of Appeals, D. C. Cir. Aff'd. in part & rev'd. in part, November 29, 1978.

H. E. Baldwin & John R. Keeling, 3 IBLA 71 (1971)

H. E. Baldwin & John R. Keeling v. Rogers C. B. Morton, et al., Civil No. 72-438 PHX CAM, D. Ariz. Dismissed, May 29, 1974; appeal dismissed, January 16, 1976.

Ball Brothers Sheep Co., et al., 2 IBLA 166 (1971)

Ball Brothers Sheep Co. v. Rogers C. B. Morton, Civil No. 1-72-35, D. Idaho. Dismissed, October 12, 1973; no appeal.

Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974)

Ballard E. Spencer Trust, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 75-060, D. N. M. Judgment for defendant, August 19, 1975; aff'd., 544 F. 2d 1067 (10th Cir. 1976).

Estate of Myron Bangs, Jr., IA-1327 (February 7, 1966)

Helen Pratt Matin, et al. v. Johnson, Supt., Osage Ind. Agency & Udall, Civil No. 6444, N.D. Okla. Sustained, June 2, 1967; dismissed, June 25, 1970.

Max Barash, The Texas Co., 63 I.D. 51 (1956)

Max Barash v. Douglas McKay, Civil No. 939-56. Judgment for defendant, June 13, 1957; rev'd. & remanded, 256 F. 2d 714 (1958); judgment for plaintiff, December 18, 1958. Supplemental decision, 66 I.D. 11 (1959); no petition.

Barnard-Curtiss Co., 64 I.D. 312 (1957)
65 I.D. 49 (1958)

Barnard-Curtiss Co. v. U.S., Ct. Cl. No. 491-59. Judgment for plaintiff, 301 F. 2d 909 (1962).

R. M. Barton, 4 IBLA 229; 5 IBLA 1 (1972)

R. M. Barton v. Rogers C. B. Morton, et al., Civil No. 9322, D. N.M.

R. M. Barton v. Rogers C. B. Morton, et al., Civil No. 9415, D. N.M. Actions consolidated. Dismissed with prejudice, December 20, 1972; no appeal.

R. M. Barton, 7 IBLA 68 (1972)

R. M. Barton v. Rogers C. B. Morton, et al., Civil No. 9692, D. N.M. Dismissed with prejudice, December 20, 1972; no appeal.

Eugenia Bate, 69 I.D. 230 (1962)

Katherine S. Foster & Brook H. Duncan, II v. Stewart L. Udall, Civil No. 5258, D. N.M. Judgment for defendant, January 8, 1964; rev'd., 335 F. 2d 828 (10th Cir. 1964); no petition.

Battle Mountain Co., A-29146 (January 31, 1963)

Battle Mountain Co. v. Stewart L. Udall, Civil No. 64-29, D. Ore. Per curiam decision, 255 F. Supp. 382 (1966); rev'd., 385 F. 2d 90 (9th Cir. 1967); cert. denied, 390 U.S. 957 (1968).

Bay Construction Co., et al., IBCA-77 (November 30, 1960)

Bay Construction Co., et al. v. U.S., Ct. Cl. No. 302-60. Dismissed with prejudice.

Robert L. Beery, et al., 25 IBLA 287; 83 I.D. 249 (1976)

J. A. Steele, et al. v. Thomas S. Kleppe in his capacity as Secretary of the Interior, & U.S., Civil No. C76-1840, N.D. Cal. Aff'd., June 27, 1978; no appeal.

Administrative Appeal of Benson-Montin-Greer Drilling Corp. v. Acting Area Director, Albuquerque Area Office, Bureau of Indian Affairs, 7 IBIA 67 (1978)

Benson-Montin-Greer Drilling Corp. v. Cecil Andrus, Individ. & as Secretary of the Interior, The Board of Indian Appeals & the Acting Area Director of the Bureau of Indian Affairs, Albuquerque Area Office, Civil No. CIV 78-468-B, D. N.M. Suit pending.

Estate of Julius Benter, IBIA-70-5 (November 17, 1970), 1 IBIA 59 (1971)

George B. Brazie, individually & as the Executor of the Last Will & Testament of Julius Benter, Deceased v. Rogers C. B. Morton, Civil No. S-2360, E. D. Cal. Stipulated dismissal with prejudice.

Sam Bergesen, 62 I.D. 295 Reconsideration denied, IBCA-11 (December 19, 1955)

Sam Bergesen v. U.S., Civil No. 2044 D. Wash. Complaint dismissed March 11, 1958; no appeal.

Estate of William Bigheart, Jr., IA-T-21 (August 8, 1969), IA-T-21 (Supp.) (September 4, 1969)

Velma Rose Bigheart, Surviving Spouse of William Bigheart, Jr., Deceased Unallotted Osage Indian v. John Pappan, Supt., Osage Indian Agency, et al., Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed December 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, August 23, 1972; aff'd., 482 F 2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Company, 82 I.D. 553 (1975)

William Bennett, Paul F. Goad & United Mine Workers v. Thomas S. Kleppe, Secretary of the Interior, No. 75-2158, United States Ct. of Appeals, D. C. Cir. Suit pending.

Estate of Anthony Bitseedy, 5 IBIA 270 (1976)

Ruby Dawson, Guardian ad litem of Anthony Bitseedy, Jr., & Sara Mingus Bitseedy, Mother of Anthony Bitseedy, Jr. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, October 27, 1977.

BLM-A-045569, 70 I.D. 231 (1963)

New York State Natural Gas Corp. v. Stewart L. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Estate of Harold Russell Bobb, 5 IBIA 92 (1976)

Wilson Bobb, Sr. v. U.S. & Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-314, S.D. Wash. Suit pending.

F. W. C. Boesche, A-27997 (August 5, 1959)

Fenelon Boesche v. Fred A. Seaton, Civil No. 2463-59. Judgment for defendant, November 23, 1960 (opinion); aff'd., 303 F. 2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd., 373 U.S. 472 (1963).

Irving B. Brick, 36 IBLA 235 (1978)

Irving B. Brick v. Cecil D. Andrus, Civil No. 78-1814. Suit pending.

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Fred A. Seaton, Civil No. 2120-57. Judgment for plaintiff, October 1, 1958; no appeal.

Jessie A. Brown, 23 IBLA 23 (1975), On Reconsideration, 28 IBLA 339 (1977)

Jessie A. Brown & W. L. Tallon, Jr. v. Cecil Andrus, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management & Ben F. Collins, Civil No. F-77-128-Civ, D. Cal. Suit pending.

Melvin A. Brown, 69 I.D. 131 (1962)

Melvin A. Brown v. Stewart L. Udall, Civil No. 3352-62. Judgment for defendant, September 17, 1963; rev'd., 335 F. 2d 706 (1964); no petition.

R. C. Buch, 75 I.D. 140 (1968)

R. C. Buch v. Stewart L. Udall, Civil No. 68-1358-PH, C. D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd., 449 F. 2d 600 (9th Cir. 1971); judgment for defendant, March 10, 1972.

Buell Brothers, A-30679 (March 29, 1967)

U.S. v. Carl M. Buell & Lloyd F. Buell, d/b/a Buell Bros., U.S. Atty. No. N-371. Compromised, October 23, 1968.

Evelyn M. Bunch, 25 IBLA 44 (1976)

Evelyn M. Bunch v. Thomas Kleppe, Secretary of the Interior, Civil No. A76-115 CIV, D. Alas. Suit pending.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, December 20, 1974.

C. Burglin et al., 21 IBLA 234 (1975)

C. Burglin, A. E. Greig, Owen Jennings, Wallace F. Burnett, Jr., Alexander Miller, Charles Stack, Dora Alice Carter, Earnest G. Carter, Howard Bowen, and Evelyn Franich v. The Secretary of the Interior, Thomas Kleppe, et al., Civil No. A75-232 CIV, D. Alas. Consolidated with C. Burglin, et al. v. Thomas Kleppe, Civil No. A75-113.

Bushman Construction Co., IBCA-103 (March 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates, a Joint Venture composed of Black Investment Properties, Inc., CPC Plants Corp. & Triple S. Enterprises, Inc. v. U.S. & Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-845, D. Ore. Suit pending.

Zelph S. Calder, A-30039 (September 18, 1963)

Zelph S. Calder v. Stewart L. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, August 10, 1964; no appeal.

The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd., 296 F. 2d 384 (1961).

State of California, et al. v. Doria Mining and Engineering Corp., et al., U.S., Intervenor, 17 IBLA 380 (1974)

Doria Mining and Engineering Corp. v. Rogers Morton, Secretary of the Interior, et al., Civil No. CV 75-899-FW, C. D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); appeal filed November 23, 1976.

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968 appealed by Secretary July 5, 1968, 75 I.D. 289 (1968).

Cameron Parish Police Jury v. Stewart L. Udall, et al., Civil No. 14,206, W. D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued November 5, 1969.

Jack D. Canon, et al., 30 IBLA 112 (1977)

Jack D. & Billie B. Canon, C. Fred & Chloe Underwood, Donald W. & Susan Canon, David A. & Ann Underwood v. Cecil D. Andrus, Secretary of the Interior, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

James W. Canon, et al., 84 I.D. 176 (1977)

Mark B. Ringstad, Willian I. Waugaman, William N. Allen III, Nils Braastad, Elmer Price, Dan Ramras, & Kenneth L. Rankin v. U.S., Secretary of the Interior, & The Arctic Slope Regional Corp., Civil No. A78-32-Civ, D. Alas. Suit pending.

Canterbury Coal Co., 83 I.D. 325 (1976)

Canterbury Coal Co. v. Thomas S. Kleppe, No. 76-2323, United States Ct. of Appeals, 3d Cir. Aff'd. per curiam, June 15, 1977.

Carbon Fuel Co., 83 I.D. 39 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1208, United States Ct. of Appeals, D. C. Cir. Suit pending.

Jack E. Carl, A-27870, A-27900 (April 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd., 309 F. 2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, December 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton, et al.

John Jay Casey, IBLA 74-196, Order decided, January 29, 1975.

John Jay Casey v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-74-153-RDF, D. Nev. Dismissed without prejudice, December 23, 1974.

C. F. Lytle Co., IBCA-172 (September 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate), et al., v. Udall, Civil No. 67-323, W. D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd. & remanded to dismiss for want of jurisdiction, 407 F. 2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd., 397 U.S. 598 (1970).

Evelyn Chambers, 33 IBLA 271 (1978)

Evelyn Chambers v. Cecil D. Andrus, Secretary of the Interior & Paul Howard, State Director, Bureau of Land Management, Civil No. C-78-0111, D. Utah. Suit pending.

Chargeability of Acreage Embraced in Oil and Gas Lease Offers, 71 I.D. 337 (1964)
Shell Oil Co., A-30575 (October 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed August 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against the Dept. by the lower court aff'd., 423 P. 2d 104 (1967); rev'd., 432 P. 2d 435 (1967).

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Cecil D. Andrus, Secretary of the Interior & Daniel P. Baker, Wyo. State Director, Bureau of Land Management, Civil No. C78-257, D. Wyo. Suit pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F. 2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Division of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, February 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76032 SC, D. Cal. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark, a political subdivision of the State of Nevada v. Thomas Kleppe, Secretary of the Interior & his successors in office & E. I. Rowland, Director, Bureau of Land Management for the State of Nevada & his successors in office, Civil No. LV-77-13 RDF, D. Nev. Rev'd., January 18, 1978; no appeal.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's. report adverse to U.S. issued December 16, 1970; Chief Commr's. report concurring with the Trial Commr's. report issued April 13, 1971. P.L. 92-108 enacted accepting the Chief Commr's. report.

Appeals of Ethyl D. & Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (1978)

Richard Wagner, et al. v. U.S., et al., Civil No. A78-106 CIV, D. Alas. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (December 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; rev'd. and remanded with direction to enter judgments for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967, W. D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, January 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil No. 3158, D. R. I. Compromised.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson, et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M. D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd., 428 F. 2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, February 7, 1974; Per curiam decision, aff'd., January 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, January 9, 1958; appeal dismissed for want of prosecution, September 18, 1958, D. C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (August 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, in the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, August 27, 1971; aff'd., 481 F. 2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co., et al., A-30760 (September 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, March 20, 1970; reconsideration denied, May 20, 1970.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe, et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall, et al., Civil No. 366-62. Judgment for defendant, April 29, 1966; aff'd., February 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Office Hearings & Appeals, Interior Board of Land Appeals & Continental Oil Co., Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Estate of Hubert Franklin Cook, 5 IBIA 42; 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Autrice C. Copeland,
See Leslie N. Baker, et al.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated December 13, 1978.

Copper Valley Machine Works, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1572. Suit pending.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoff, 80 I.D. 301 (1973)

Edward D. Neuhoff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, September 12, 1975 (opinion); aff'd., July 17, 1978; no petition.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alas. Judgment for defendant, March 23, 1973; aff'd., September 3, 1974; no petition.

William D. Cornia, et al., Wyoming 4-63-1, etc., Utah 1-63-1, etc., (August 25, 1965)

William D. Cornia, et al. v. Stewart L. Udall, Civil No. 4-66, N. D. Utah. Dismissed with prejudice, September 1, 1967.

Cortella Coal Corp., et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alas. Dismissed with prejudice, January 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co., et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued March 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. The Honorable Cecil Andrus, Secretary of the Interior, Stanley Speaks, Area Director for the Bureau of Indian Affairs, Anadarko Agency & Samedan Oil Corp., Civil No. CIV 77-0415T, D. Okla. Aff'd., January 19, 1979; no appeal.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1980, United States Ct. of Appeals, D. C. Cir. Suit pending.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, December 16, 1975.

Elizabeth Barndt Crouse, et al., A-30542 (March 7, 1968)

Elizabeth Barndt Crouse, et al. v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, April 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S., & Rogers C. B. Morton, Civil No. F-27-71 Civ., D. Alas. Dismissed, July 13, 1972; no appeal.

Estate of George Daniels, IA-1295 (November 2, 1965)

Elizabeth Daniels, et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N. D. Okla. Dismissed with prejudice, January 9, 1967.

Susan Dawson, 35 IBLA 123 (1978)

Susan Dawson v. Cecil Andrus, Secretary of the Interior, Civil No. C78-167, D. Wyo. Suit pending.

Oma Belle Day, et al., AA-5702 (December 30, 1969)

Oma Belle Day v. Walter J. Hickel, et al., Civil No. A-9-70, D. Alas. Judgment for defendant, February 19, 1971; aff'd., 481 F. 2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd., 259 F. 2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

The Dredge Corp., 64 I.D. 368 (1957)
65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, September 9, 1964; aff'd., 362 F. 2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P. 2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Alfred L. Easterday, 34 IBLA 195 (1978), Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (1978)

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior & Alfred L. Easterday, & J. Roe, Civil No. C78-104, D. Wyo. Suit pending.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, Alfred L. Easterday, & J. Roe, Civil No. C78-213, D. Wyo. Suit pending.

Donald W. Coyer & Fred L. Engle, d/b/a Resource Service Co. v. Cecil D. Andrus, Secretary of the Interior, & Wyo. State Office, Bureau of Land Management, Civil No. C78-214, D. Wyo. Suit pending.

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D. C. Cir. Dismissed by stipulation, October 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D. C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975), Reconsideration, 83 I.D. 425 (1976), Aff'd. en banc, 83 I.D. 695 (1976), 7 IBMA 152 (1976)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1090, United States Ct. of Appeals, D. C. Cir. Voluntary dismissal, April 4, 1977.

Lawrence Edwards, A-30696, A-30705 (April 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd. & remanded, November 18, 1968; stipulation for dismissal & order filed August 4, 1970.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (1978)

Wesley Laverne Edwards v. U.S., Cecil Andrus, Secretary of the Interior, E. I. Rowland, Nevada State Director, Bureau of Land Management & Paul Unruh, Civil No. 77-0050 BRT, D. Nev. Judgment for defendant, October 31, 1978; appeal filed December 27, 1978.

Appeal of Eklutna, Inc., 1 ANCAB 165; 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board, et al., Civil No. A76-236, D. Alas. Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, individually & on behalf of all others similarly situated v. Thomas Kleppe, individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alas. Remanded for exhaustion of administrative remedies; reconsideration denied, December 10, 1976; appeal dismissed; judgment denying plaintiffs motion for summary judgment & remanding case to Agency, April 20, 1977; appeal filed April 25, 1977.

Henry J. Ernst, A-27196 (November 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alas. Return of service quashed & complaint dismissed, December 28, 1956 (opinion); aff'd., 244 F. 2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (April 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd., March 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, December 5, 1973 (opinion); no appeal.

John J. Farrelly, et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, October 11, 1955; no appeal.

Ralph G. Faulkner, et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land Management, et al., Civil No. 1-77-99, D. Idaho. Suit pending.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. 75-404-Civ-T-K, M. D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton, et al., Civil No. A75-42, D. Alas. Consent decree approved by the Judge.

Foote Mineral Co., 34 IBLA 285; 85 I.D. 171 (1978)

Foote Mineral Co. v. Cecil D. Andrus, Individ. & as Secretary of the Interior, H. William Menard, Individ. & as Director, Geological Survey, & Murray T. Smith, Individ. & as Area Mining Supervisor, Geological Survey, Civil No. LV-78-141 RDF, D. Nev. Suit pending.

Carl E. Forsberg, et al., A-29158 et al., (August 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Robert K. Foster, et al., A-29857 (June 15, 1964)

Robert K. Foster, et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S. D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D. N. M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co., et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, August 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer, et al., A-29221 (April 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton, et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, November 14, 1972.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall, et al., Civil No. 2818 ND, S. D. Cal. Dismissed with prejudice, February 15, 1967; aff'd., 396 F. 2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, December 1, 1961; aff'd., 315 F. 2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (October 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, January 17, 1969; no appeal.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113; 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, November 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaunmah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W. D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, individually & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, December 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, August 3, 1961; aff'd., 309 F. 2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (April 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, January 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D. N. M. Judgment for defendant, June 4, 1964; aff'd., 352 F. 2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (March 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D. N. M. Dismissed with prejudice, November 12, 1963.

John Gonzales, A-30604 (September 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alas. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, November 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, November 29, 1975 (opinion); Appeal dismissed, March 9, 1976.

Ray Granat, et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Department of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw, et al. v. Secretary, Civil No. 68-317, W. D. Okla. Dismissed, February 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974), 24 IBLA 49 (1976)

Grindstone Butte Project, et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, September 8, 1977; appeal filed November 7, 1977.

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, March 15, 1976.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, October 19, 1962; aff'd., 325 F. 2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. & Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E. D. La. Remanded to the Secretary of the Interior for a hearing, April 13, 1977.

Thomas V. Gullo & Joseph L. Randazzo, 29 IBLA 126 (1977)

Thomas V. Gullo & Joseph L. Randazzo v. Department of the Interior, Civil No. 77-0869. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (October 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (March 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed September 11, 1958. Compromise offer accepted and case closed October 10, 1958.

L. H. Hagood, et al., 65 I.D. 405 (1958)

Edwin Still, et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall, et al., A-30849, A-30852, A-30857 (September 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alas. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (September 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N. D. Cal. Judgment for defendant, December 13, 1963 (opinion); judgment entered February 11, 1964; appeal docketed February 14, 1964; dismissed by plaintiff, March 20, 1964.

Raymond J. Hansen, et al., 67 I.D. 362 (1960)

Raymond J. Hansen, et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (March 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S. D. Cal. Dismissed, September 30, 1965; amended complaint filed November 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, November 15, 1967; judgment for defendants, March 26, 1968; rev'd., 427 F. 2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S. D. Cal. Dismissed, December 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, December 7, 1973; motion for new trial denied, February 6, 1974; no appeal.

Paul Harvey, et al. A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D. N. M. Judgment for defendant, January 25, 1967; aff'd., 384 F. 2d 883 (10th Cir. 1967); no petition.

Billy K. Hatfield, et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America, et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Court of Appeals, D. C. Cir. Board's decision aff'd., 562 F. 2d 1260 (1977).

Headwaters Association, Protestant-Appellant Cabax Mills, et al., Intervenors, IBLA 76-68, remanded to Bureau of Land Management by Order, October 21, 1975; Appeal of Harold P. Canady, et al., IBLA 73-357, pending; Appeal of Elizabeth Freeman, IBLA 76-51, pending; Appeal of Alan Troxler, IBLA 74-215, pending; Appeal of Alan Winter, et al., IBLA 75-653, pending; Appeal of Carl Wittman, IBLA 76-14, pending.

Arthur Downing, Alan Winter, Alan Troxler and Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Ore. Stipulated dismissal, December 30, 1976.

Thomas D. Hickey, 34 IBLA 86 (1978)

Thomas D. Hickey v. U.S., Interior Board of Land Appeals, Cecil D. Andrus, Secretary of the Interior, & William L. Mathews, State Director (Idaho), BLM, Civil No. CIV 78-1142, D. Idaho. Suit pending.

Jesse Higgins, Paul Gower & William Gipson v. Old Ben Coal Corp., 81 I.D. 237 (1974)

Jesse Higgins, et al. v. Cecil D. Andrus, No. 77-1363, United States Ct. of Appeals, D. C. Cir. Dismissed for lack of jurisdiction, June 20, 1977.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Judgment for plaintiff, April 4, 1978.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alas. Dismissed with prejudice, October 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Suit pending.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565, (Order of dismissal dated February 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, December 17, 1974; aff'd., 529 F. 2d 645 (10 Cir. 1976); no petition.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, March 31, 1976; rev'd. & remanded with directions, 570 F. 2d 906 (10th Cir. 1978); cert. denied, October 2, 1978.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, November 29, 1976.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd. & remanded for further administrative proceedings, 406 F. Supp. 214 (1976); appeal filed January 14, 1976; final judgment entered May 12, 1976; appeal filed July 7, 1976; aff'd., November 7, 1977; no petition.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman, et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed, et al. v. Dept. of the Interior, et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, September 3, 1965; dismissed, November 10, 1965; amended complaint filed, September 11, 1967.

U.S. v. Raymond T. Michener, et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp., et al., Civil No. 1-67-97, S. D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd., 480 F. 2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, August 30, 1976.

Appeal of Inter Helo, Inc., IBCA-713-5-68 (December 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, March 27, 1968.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, September 10, 1976.

J. A. Jones Construction Co., et al., IBCA-233 (June 17, 1960)

Palisades Contractors, et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F. 2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W. D. Wash. Judgment for defendant, February 24, 1964; no appeal.

Dale Johnson, A-30806 (September 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alas. Stipulated Dismissal, April 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971) U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Judgment for defendant, October 18, 1977; appeal filed December 5, 1977.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S., et al., Civil No. 76-0552. Dismissed as to defendants U.S., Department of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Snashall, July 30, 1976.

Kenneth J. Kadow, et al., A-30053 (October 5, 1964)

Kenneth J. Kadow, et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, September 7, 1967; dismissed for lack of prosecution, February 2, 1968; no petition.

Kanawah Coal Co., 7 IBMA 234 (1977)

Kanawah Coal Co. v. Cecil D. Andrus, No. 77-1089, United States Ct. of Appeals, 4th Cir. Petition for review denied, 553 F. 2d 361 (4th Cir. 1977).

R. A. Keans, A-30183 (February 16, 1965)

R. A. Keans v. Stewart L. Udall, et al., Civil No. 2648-ND, S. D. Cal. Defendant's motion to dismiss granted, November 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (September 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W. D. Okla. Aff'd., 265 F. Supp. 848 (1967); aff'd., 404 F. 2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration denied, May 14, 1974.

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton, et al., Civil No. 616-72. Dismissed with prejudice, October 22, 1974; aff'd., 527 F. 2d 838 (1975); no petition.

Estate of San Pierre Kilkaken (Sam Hill), 1 IBIA 299; 79 I.D. 583 (1972), 4 IBIA 242 (1975), 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Dismissed with prejudice.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, November 8, 1961; rev'd., 308 F. 2d 650 (1962); no petition.

John J. King, et al., Fairbanks 033268, 033279 (September 25, 1964)

John J. King, et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (October 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alas. Dismissed with prejudice, April 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (April 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (August 20, 1963)

George M. Larsen, et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Kirkpatrick Oil Co., 32 IBLA 329 (1977)

Kirkpatrick Oil & Gas Co. v. U.S. & Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-77-1247E, D. Okla. Suit pending.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individually & in his official capacity as Secretary of the Interior, et al., Civil No. A76-44 CIV, D. Alas. Suit pending.

Anquita L. Kluenter, et al., A-30483, November 18, 1965
See Bobby Lee Moore, et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd., 432 F. 2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Judgment for defendant, January 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, September 4, 1974; dismissed, September 11, 1975.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R. R., A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall, et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd., 432 F. 2d 254 (9th Cir. 1970); no petition.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, March 6, 1963; aff'd., 324 F. 2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch, Appellants, M. S. Land & Livestock Co., Intervenor, 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, March 12, 1974; aff'd., March 2, 1976; rehearing denied, April 21, 1976; cert. denied, November 1, 1976.

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd., 406 F. 2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (1976) On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, individually & as Secretary of the Interior, Curt Berklund, individually & as Director, Bureau of Land Management, & H. M. Bruce, individually & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Order granting motion to transfer case to Ariz. granted, May 4, 1977 (Civil No. 77-380-PHX-WPC, D. Ariz.) Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, individually & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F. 2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, October 5, 1964; appeal voluntarily dismissed, March 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd., 427 F. 2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall., et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966; aff'd., 374 F. 2d 180 (9th Cir. 1967); no petition.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency, 4 IBIA 147; 82 I.D. 521 (1975)

Ruth Pinto Lewis, Individually & as the Administratrix of the Estate of Ignacio Pinto v. Thomas S. Kleppe, Secretary of the Interior, & U.S., Civil No. CIV-76-223 M, D. N.M. Judgment for plaintiff, July 21, 1977; no appeal.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964; stipulated dismissal of appeal with prejudice, October 5, 1964.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co., et al., v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Merwin E. Liss, et al., 70 I.D. 231 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; per curiam dec., aff'd., April 28, 1966; no petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Leland Murray Lucas v. Stewart L. Udall, et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W. D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, I IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton, et al., Civil No. 9585, D. Wash. Judgment for defendant, January 14, 1972; aff'd., February 26, 1974; no petition.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey, et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, December 10, 1970; no appeal.

Joseph MacIsaac, et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alas. Dismissed with prejudice for want of prosecution by plaintiff, December 19, 1974.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); Per curiam decision, aff'd., 494 F. 2d 1156 (D.C. Cir. 1974); no petition.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968; aff'd., 418 F. 2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd., 289 F. 2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (February 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D. C. Judgment for defendant, March 13, 1970; dismissed for lack of prosecution, April 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61; 83 I.D. 145 (1976)

Raymond C. McMaster v. U.S., Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs, Civil No. C76-129T, W.D. Wash. Dismissed, June 29, 1978.

Wade McNeil, et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd., 281 F. 2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard, et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, December 13, 1963 (opinion); aff'd., 340 F. 2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, February 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, April 4, 1974; aff'd., January 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, February 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, 407 F. Supp. 1301 (1975); aff'd., 556 F. 2d 982 (10th Cir. 1977).

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, January 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (February 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, September 25, 1973.

Billy Mathis, et al., A-30512 (July 6, 1966)

Billy Mathis, et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, March 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23, 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd., 369 F. 2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered September 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F. 2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, September 30, 1974; dismissed, May 14, 1976; rehearing denied, June 3, 1976; cert. denied, November 8, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel, et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, February 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, February 23, 1961; aff'd., 307 F. 2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, April 4, 1963; aff'd., per curiam dec., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, September 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, November 21, 1962 (opinion); appeal dismissed April 12, 1963.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), & A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, October 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, April 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, September 28, 1965; no appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, February 15, 1966; dismissed, April 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, November 15, 1965; aff'd., 368 F. 2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, October 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed April 12, 1968; petition for mandamus denied, October 14, 1968.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, August 11, 1966; appeal dismissed, September 14, 1967.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, April 17, 1967; no appeal.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967; motion for reconsideration denied, September 19, 1967; no appeal.

Duncan Miller, A-29231 (February 5, 1963)
See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, April 25, 1969; no appeal.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30797 (September 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D. N.M. Dismissed with prejudice, August 28, 1968; motion to set aside judgment denied, September 24, 1968; motion for reconsideration denied, November 4, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, October 14, 1968; no appeal.

Duncan Miller, A-30924 (November 13, 1968), A-30934 (November 22, 1968), A-30966 (October 29, 1968), A-31054 (August 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, January 6, 1972; motion for reconsideration denied, February 7, 1972.

Duncan Miller, A-31087 (February 4, 1970), A-31095 (February 2, 1970), A-31148 (March 2, 1970), A-31159 (March 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, January 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, November 2, 1973; motion for rehearing denied, November 14, 1973; appeal dismissed, February 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, February 7, 1973; motion to set aside judgment denied, March 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, December 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, October 31, 1974; motion to amend complaint denied, December 18, 1974.

Duncan Miller v. Adjudicate Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Department of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, October 30, 1973; motions for reconsideration denied respectively, December 4, 1973, January 4, 1974, & April 5, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), 73 IBLA 319, 406, 407, 410, 411, 412, 74 IBLA 12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, February 15, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certorari filed; no petition.

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, October 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975).

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, August 8, 1975; reconsideration denied, September 16, 1975.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, April 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975).
See also Evelyn R. Robertson.

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick, et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individually & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, December 21, 1976.

Mitchell Energy Corp., 32 IBLA 244 (1977)

Mitchell Energy Corp. v. Cecil D. Andrus, Individually & as Secretary of the Interior, Civil No. 77-2165. Judgment for defendant, Nobember 30, 1978; no appeal.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan, et al. v. Warren J. Gray, et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, November 13, 1967; aff'd., 413 F. 2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964; no appeal.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083, (9th Cir.). Dismissed for lack of jurisdiction, April 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, April 11, 1974.

Bobby Lee Moore, et al., 72 I.D. 505 (1965)
Anquita L. Kluenter, et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration, et al., Civil No. 3253, S.D. Cal. Judgment for defendant, April 12, 1965; aff'd., 377 F. 2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan, et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, February 20, 1961 (opinion); aff'd., 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r., 345 F. 2d 833 (1965); Commr's. report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F. 2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on October 6, 1969; judgment for plaintiff, February 17, 1970.

Mildred A. Moss, et al., 28 IBLA 364 (1977), Reconsideration denied, March 18, 1977.

Mildred A. Moss, Emily C. Biester, Donald E. Howell, Robert C. Pass & Thomas L. Williams v. Cecil D. Andrus, Secretary of the Interior, Arthur W. Zimmerman, State Director, Bureau of Land Management & Raul E. Martinez, Chief, Minerals Section, Bureau of Land Management, Civil No. CIV 77-234 B, D. N.M. Judgment for defendant, November 1, 1977; aff'd., September 20, 1978.

Glenn Munsey, Earnest Scott, & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972), 8 IBMA 43 (1977)

Glenn Munsey, Arnold Scott, & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Vacated & remanded, 507 F. 2d 1202 (1974).

Glenn Munsey v. Smitty Baker Coal Co., Ralph Baker, Smitty Baker, & P & P Coal Co., 84 I.D. 336 (1977)

Glenn Munsey v. Cecil D. Andrus, No. 77-1619, United States Ct. of Appeals, D. C. Cir. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake, & Kee Begay v. Morris Thompson, Commissioner of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Judgment for defendant, January 20, 1978; appeal filed March 15, 1978.

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo, & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Dismissed with prejudice, January 4, 1979.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alas. Judgment for defendant, September 17, 1965; aff'd., 385 F. 2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, March 20, 1975; no appeal.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965; rev'd. & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren, et al., rev'd. & remanded, 370 F. 2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's. report adverse to U.S. issued December 10, 1971; judgment for plaintiff, 458 F. 2d 64 (1972).

Northwest Citizens for Wilderness Mining Co., 33 IBLA 317 (1978)

Northwest Citizens for Wilderness Mining Co. v. The Bureau of Land Management, & Edna A. Haverland, Individ. & Chief, Branch of Records & Data Management, BLM, Civil No. 78-46-M, D. Mont. Suit pending.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, November 15, 1963; case reinstated, February 19, 1964; remanded, April 4, 1967; rev'd. & remanded with directions to enter judgment for appellant, 389 F. 2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn By Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alas. Dismissed, October 29, 1963 (oral opinion); aff'd., 332 F. 2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964; no appeal.

Oil Resources, Inc., 28 IBLA 394; 84 I.D. 91 (1977)

Oil Resources Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. C-77-0147, D. Utah. Suit pending.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, April 9, 1976.

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals, et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd., June 13, 1975; reconsideration denied, June 27, 1975.

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Circuit. Vacated & remanded with instructions to dismiss as moot, June 10, 1977.

Old Ben Coal Co., 84 I.D. 459 (1977)

United Mine Workers of America v. Cecil D. Andrus, No. 77-1840, United States Ct. of Appeals, D. C. Cir. Suit pending.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966), A-30488 (Supp.) (December 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, August 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, March 8, 1967; no appeal; stipulated dismissal, November 22, 1971.

Appeal of Ounalashka Corp., 1 ANCAB 104; 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of Interior, & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alas. Suit pending.

Oyate Inc., et al., IA-2629 (Still pending)

Oyate, Inc. a non profit South Dakota Corp., et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, January 7, 1974.

Eugene C. Paine, et al., A-27632 (August 21, 1958)

Eugene C. Paine, et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, September 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd. & remanded, February 23, 1961; judgment for defendant, March 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, December 16, 1970; rev'd., 496 F. 2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, February 16, 1966; no appeal.

Jack W. Parks v. L & M Coal Corp., 83 I.D. 710 (1976)

Jack W. Parks v. Thomas S. Kleppe, No. 76-2052, United States Ct. of Appeals, D. C. Cir. Voluntary dismissal, May 4, 1977.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Peabody Coal Co., 34 IBLA 139 (1978), 36 IBLA 242 (1978)

Peabody Coal Co. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, Frank Gregg, Dir. Bureau of Land Management, Civil No. C78-161, D. Wyo. Suit pending.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F. 2d 722 (1970).

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez, et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, September 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, December 1, 1975; no appeal.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, November 13, 1961; no appeal.

Virgil V. Peterson & Hiko Bell Mining & Oil Co., 37 IBLA 18 (1978)

Virgil V. Peterson v. The Dept. of Interior & Cecil D. Andrus, Secretary of the Interior, Civil No. C 78-0463, D. Utah. Suit pending.

Hiko Bell Mining & Oil Corp. v. Cecil D. Andrus, Secretary of the Interior, Guy Martin, Assistant Secretary, Land & Water Resources, & Frank Gregg, Dir., Bureau of Land Management, Civil No. C78-0465, D. Utah. Suit pending.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

City of Phoenix v. Alvin B. Reeves, et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, August 9, 1974; reconsideration denied, September 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, August 2, 1962; aff'd., 317 F. 2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

Pocahontas Fuel Co., 83 I.D. 690 (1976)

Howard Mullins v. Cecil D. Andrus, No. 77-1087, United States Ct. of Appeals, D. C. Cir. Suit pending.

Pocahontas Fuel Co., 84 I.D. 489 (1977)

Pocahontas Fuel Co., Div. of Consolidation Coal Co. v. Cecil D. Andrus, No. 77-2239, United States Ct. of Appeals, 4th Cir. Suit pending.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

L. O. Power, et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (August 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), 26 IBLA 340 (1966) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D. N.M. Remanded to the Department, April 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D. N.M. Remanded to the Department, April 6, 1976; judgment for defendants, May 5, 1977.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Estate of Henry Frank Racine, 7 IBIA 1 (1978)

Martha Alfreda Racine Crawford, et al. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CV-78-8-6F, D. Mont. Suit pending.

Ethel C. Radzewicz, et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, October 30, 1969; dismissed, November 17, 1970.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, August 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968; subsequent Contract Officer's dec., December 3, 1969; interim dec., December 2, 1969; Order to Stay Proceedings until March 31, 1970; dismissed with prejudice, August 3, 1970.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967; rev'd. & remanded, 398 F. 2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton, et al., Civil No. 1105, D. Mont. Dismissed, June 14, 1973; no appeal.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1477, United States Court of Appeals, 4th Cir. Board's decision aff'd., 478 F. 2d 257 (4th Cir. 1973).

Republic Steel Corp., 82 I.D. 607 (1975)

Republic Steel Corp. v. Interior Board of Mine Operations Appeals, No. 76-1041, United States Ct. of Appeals, D. C. Cir. Rev'd. & remanded, February 22, 1978.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, April 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, March 6, 1958; no appeal.

Mark B. Ringstad, et al., Inlet Oil Corp., et al., Robert L. Lawler, et al., A-31111, A-31115, A-31134, A-31118 (March 17, 1970)

Robert Lawler, et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alas.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alas. Stipulated dismissal without prejudice, August 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, February 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), Reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971), 2 IBIA 33, 80 I.D. 390 (1973)

Oneta Lamb Robedeaux, et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, January 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, October 29, 1973; amended judgment for plaintiff, November 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, April 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, October 2, 1975; judgment for plaintiff, December 1, 1975.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21 1963), (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, March 13, 1964; aff'd., 349 F. 2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, April 4, 1964; aff'd., 349 F. 2d 195 (1965); no petition.

Estate of Clark Joseph Robinson, 7 IBIA 74; 85 I.D. 294 (1978)

Rene Robinson, by & through her Guardian Ad Litem, Nancy Clifford v. Cecil Andrus, Secretary of the Interior, Gretchen Robinson, & Trixi Lynn Robinson Harris, Civil No. CIV-78-5097, D. S.D. Suit pending.

Rosebud Coal Sales Co., 37 IBLA 251; 85 I.D. 396 (1978)

Rosebud Coal Sales Co. v. Cecil D. Andrus, Secretary of the Interior, Frank Gregg, Director, Bureau of Land Management, & Maria B. Bohl, Chief, Land & Mining, Bureau of Land Management, Wyo., Civil No. C78-261, D. Wyo. Suit pending.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Frank Roybal, Jr. v. U.S. Steel Corp., 7 IBMA 238 (1977)

Frank Roybal, Jr. v. Cecil D. Andrus, No. 77-1307, United States Ct. of Appeals, D. C. Cir. Suit pending.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, September 22, 1965; aff'd., 379 F. 2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Louise Safarik, et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alas. Dismissed, March 4, 1975; reinstated by court order, April 9, 1975; remanded to the Bureau of Land Management for proceedings, March 19, 1976.

Louis Samuel, et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D. N.M. Dismissed with prejudice, January 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, October 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton, et al., Civil No. 03266, E.D. Mich. Dismissed, February 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, August 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd., sub nom. S. Jack Hinton, et al. v. Stewart L. Udall, 364 F. 2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, November 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed January 12, 1966; order vacating prior judgment issued January 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (April 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen, et al., Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, November 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., Supra., filed June 3, 1974.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968; aff'd., 419 F. 2d 663 (1969); petition for rehearing en banc denied, October 8, 1969; no petition.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, January 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, January 26, 1976.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, January 26, 1976.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, January 26, 1976.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alas. Dismissed, January 5, 1977.

William D. Sexton, et al., 9 IBLA 316 (1973), R. C. Bailey, et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton, et al., Civil No. F-9-73, D. Alas.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alas.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alas.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alas.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, August 5, 1974; aff'd., 527 F. 2d 486 (9th Cir. 1976); cert. denied, 425 U.S. 973 (1976).

Steve Shapiro v. Bishop Coal Co., 83 I.D. 59 (1976)

Bishop Coal Co. v. Thomas S. Kleppe, No. 76-1368, United States Ct. of Appeals, 4th Cir. Suit pending.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd., 264 F. Supp. 390 (1967); appeal docketed March 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Director of the New Mexico State office of the Bureau of Land Management, Civil No. CIV-76-338-P, D. N.M. Judgment for defendant, February 22, 1977; aff'd., September 17, 1977.

Shell Oil Co., A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal August 19, 1968.

Estate of Albin (Alvin) Shemany, 7 IBIA 70 (1978)

Edward, Clara & Alice Longhat v. Cecil Andrus, Secretary of the Interior, Civil No. CIV 78-0929-D, W.D. Okla. Suit pending.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd., 432 F. 2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), No. 75-1292, United States Ct. of Appeals, 4th Cir. Vacated without prejudice to plaintiff's rights, 529 F. 2d 601 (4th Cir. 1975).

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D. N.M. Judgment for plaintiff, August 7, 1975 (opinion); no appeal.

Eldon L. Smith, A-30944 (October 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, February 3, 1970.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963; aff'd., 336 F. 2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho, et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961; no appeal.

Walter M. Sorensen, 32 IBLA 345 (1977)

Walter M. Sorensen v. Cecil D. Andrus, Secretary of the Interior, & Daniel P. Baker, State Director, Bureau of Land Management, Civil No. C77-250, D. Wyo. Aff'd., September 12, 1978.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, December 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton, et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 177; Dist. Ct. reserves jurisdiction; supplemental complaint filed, August 1, 1975; judgment for defendant, November 29, 1976; appeal filed January 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall, et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd., 371 F. 2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, January 14, 1970; appeal dismissed, April 6, 1970.

Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D. N.M. Judgment for defendant, March 8, 1965; aff'd., 361 F. 2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California, et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel, et al., Civil No. A-159-69, D. Alas. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd., sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton, et al., 450 F. 2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965; no appeal.

Starling Brokers, et al., 6 IBLA 237 (1972)

Hillin L. Arnold, et al. v. Rogers C. B. Morton, et al., Civil No. A-157-72 Civ., D. Alas. Judgment for defendant, March 20, 1974; rev'd. & remanded, 529 F. 2d 1101 (9th Cir. 1976).

Ross Stegman, A-30812 (November 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, December 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, September 10, 1975; rev'd., October 26, 1978.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel, et al., Civil No. 8074, D. N.M. Judgment for defendant, January 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd., 444 F. 2d 200 (10th Cir. 1971); no petition.

Joe Stewart, 33 IBLA 225 (1977)

Joe Stewart v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-1038, D. Idaho. Suit pending.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant, August 29, 1975; amended order judgment for defendant, September 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alas. Remanded to the Department, May 6, 1976; appeal filed, June 30, 1976.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966), Florence Emily Tagala v. Norman C. Gorsuch, Special Administrator of the Estate of Amanda Price, A-31241 (January 9, 1970)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F. 2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, November 1, 1962 (opinion); rev'd., 324 F. 2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist Ct. aff'd., 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd. in part & remanded, 437 F. 2d 636 (1970); aff'd. in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Albert Thomas, et ux. (Contestees) v. Sam A. DeVilbiss, et ux. (Contestees), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, 408 F. Supp. 1361 (1976); aff'd., 552 F. 2d 871 (9th Cir. 1977).

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, September 18, 1958; aff'd., 270 F. 2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D. N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, et al., Civil No. 2406-61. Judgment for defendant, March 22, 1962; aff'd., 314 F. 2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd., 350 F. 2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood, et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; aff'd., 350 F. 2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties Inc., d/b/a Toke Cleaners & Launderers v. U.S., Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D. N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Estate of Phillip Tooisgah, 4 IBIA 189; 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Suit pending.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 & 113 (April 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co., et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd., 409 F. 2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, December 27, 1965; no appeal.

Union Oil Co. of California, et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown, et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corp., et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

The Oil Shale Corp., et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976; remanded to the Dept. for further proceedings, January 17, 1977.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd., 289 F. 2d 790 (1961); no petition.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd., 379 F. 2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

United Mine Workers of America v. Inland Steel Co., 83 I.D. 87 (1976)

United Mine Workers of America v. Thomas S. Kleppe, No. 76-1377, United States Ct. of Appeals, 7th Cir. Board's decision aff'd., 561 F. 2d 1258 (7th Cir. 1977).

United Mine Workers of America, Local Union No. 1993 v. Consolidation Coal Co., 84 I.D. 254 (1977)

Local Union No. 1993, United Mine Workers of America v. Cecil D. Andrus, No. 77-1582, United States Ct. of Appeals, D. C. Cir. Suit pending.

U.S. v. Alonzo A. Adams, et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams, et al. v. Paul B. Witmer, et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, November 27, 1957 (opinion); rev'd. & remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (9th Cir. 1959).

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion); judgment modified, 318 F. 2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Ore. Judgment for defendant, July 5, 1978.

U.S. v. A. F. Anderson, et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with Walter H. Burkhardt, et al. v. Rogers C. B. Morton, et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of November 19, 1975; dismissed, November 28, 1975.

U.S. v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil No. 987-63. Judgment for defendants, September 30, 1963; appeal dismissed, 348 F. 2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individually & as Secretary of the Interior & Stanley Gurnewald, Individually & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Complaint dismissed, April 25, 1977; appeal filed June 21, 1977.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, April 20, 1970; aff'd., 447 F. 2d 80 (9th Cir. 1971).

U.S. v. A. O. Bartell, 31 IBLA 47 (1977)

A. O. Bartell v. Cecil Andrus, Secretary of the Interior, Civil No. 77-667, D. Ore. Suit pending.

U.S. v. Charles Thomas Beaird, 31 IBLA 203 (1977)

Charles Thomas Beaird v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F-77-31, D. Alas. Suit pending.

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Judgment for defendant, June 6, 1975; rev'd. & remanded with instructions to remand to the Secretary of the Interior, March 29, 1977; no petition.

U.S. v. Blue Bell Gold Mining Co., et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, September 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D. N.M. Dismissed, February 28, 1977; aff'd., November 16, 1977.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alas. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion); no appeal.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), Reconsideration denied, January 22, 1970.

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; rev'd. & remanded, 519 F. 2d 551 (9th Cir. 1975); cert. denied, 423 U.S. 1033 (1975).

U.S. v. R. W. Brubaker, et al., A-30636 (July 24, 1968), 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, August 13, 1973; aff'd., 500 F. 2d 200 (9th Cir. 1974); no petition.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alas. Remanded to the Agency for final consideration on the merits, January 5, 1978.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102; 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Appelgate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Suit pending.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (August 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, September 24, 1970; no appeal.

U.S. v. John C. Chapman, et al., A-30581 (July 16, 1968)

John C. Chapman, et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, January 18, 1972; no appeal.

U.S. v. Charleston Stone Products, Inc., 9 IBLA 94 (1973)

Charleston Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, November 7, 1974 (opinion); aff'd. & remanded, 553 F. 2d 1209 (9th Cir. 1977); rev'd. & remanded, 436 U.S. 604 (1978).

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962; no appeal.

Nick Chournos, et al. v. U.S., et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd., 335 F. 2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, April 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd., October 9, 1974; rehearing denied, January 13, 1975; cert. denied, April 21, 1975.

U.S. v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, January 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, December 6, 1971; appeal withdrawn, March 10, 1972.

U.S. v. Alfred Coleman, A-28557 (March 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion); remanded, 363 F. 2d 190 (9th Cir. 1966); aff'd., 379 F. 2d 555 (9th Cir. 1967); Cert. granted, 389 U.S. 970 (1967); rev'd. & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd., 405 F. 2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd., 399 F. 2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (January 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. Jerry L. Crow, 28 IBLA 345 (1977)

Jerry L. Crow v. Cecil Andrus, Secretary of the Interior & U.S., Civil No. F77-12-CIV, D. Alas. Judgment for defendant, June 23, 1978.

U.S. v. Bradley F. Denham, 29 IBLA 185 (1977)

Bradley F. Denham v. Cecil Andrus, Secretary of the Interior, Civil No. CIV77-392 Phx WEC, D. Ariz. Suit pending.

U.S. v. Alvis F. Denison, et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil No. 963 D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, January 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, January 31, 1972; aff'd., February 1, 1974; cert. denied, October 15, 1974.

U.S. v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (April 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, September 10, 1969; decision of BLM dated January 16, 1970 aff'd. by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas L. Kleppe, Secretary of the Interior, Curtis Berklund, Director of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, February 9, 1977; no appeal.

U.S. v. Francis Dlouhy, et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, November 28, 1960.

U.S. v. The Dredge Corp., A-28022 (December 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; judgment for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers B. Morton, et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, February 12, 1974.

U.S. v. Maurice Duval, et al., 1 IBLA 103 (1970)

Maurice Duval, et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. (1972); aff'd., December 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, January 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (January 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, November 23, 1970.

U.S. v. Harlan H. Foresyth, 15 IBLA 43 (1974), Petition for review granted by order of October 30, 1975.

Earl J. Brubaker, Frank Jobe, Jr. & Rexford L. Mitchell v. Cecil Andrus, Secretary of the Interior, et al., Civil No. 77-W-280, D. Colo. Suit pending.

U.S. v. Everett Foster, et al., 65 I.D. 1 (1958)

Everett Foster, et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, December 5, 1958 (opinion); aff'd., 271 F. 2d 836 (1959); no petition.

U.S. v. Andrew L. Freese, II, 37 IBLA 7 (1978)

Andrew L. Freese, II v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV 78-1314, D. Idaho. Suit pending.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, August 8, 1975.

U.S. v. Fred & Eileen Garner, 30 IBLA 42 (1977)

Fred & Eileen Garner v. U.S., et al., Civil No. 78-0314, D. Colo. Suit pending.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd., 405 F. 2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (September 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, October 6, 1969; no appeal.

U.S. v. Golden Grigg, et al., 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Suit pending.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, September 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck, et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Suit pending.

U.S. v. Urban Harenberg, et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (December 19, 1966), 3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, October 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd. & remanded for further proceedings, October 25, 1974; no petition.

U.S. v. Gerald D. Heden, et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Ore. Dismissed, August 4, 1977; appeal filed September 29, 1977.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd. & remanded for further proceedings, 419 F. 2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, October 6, 1970.

U.S. v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd., 350 F. 2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks, et al., A-30780 (October 24, 1967)

Taylor T. Hicks, et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, March 26, 1970.

U.S. v. Ernest Higbee, et al., A-31063 (April 1, 1970)

Ernest Higbee, et al. v. Rogers C. B. Morton, et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, September 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, December 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; aff'd., 549 F. 2d 622 (9th Cir. 1977); petition for cert. filed June 25, 1977.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alas. Judgment for defendant, February 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd., 542 F. 2d 1364 (9th Cir. 1976).

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)
See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (October 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, November 21, 1967; no appeal.

U.S. v. Robert N. Johnson, et al., A-30828 (January 29, 1968)

Robert N. Johnson, et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (December 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, October 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; dismissed, January 7, 1977.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, November 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, January 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall, et al., Civil No. 1864, D. Nev. Judgment for defendant, January 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (March 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, February 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, September 24, 1974; no appeal.

U.S. v. Lost Polack Mining Association, 38 IBLA 101 (1978)

Lost Polack Mining & Exploration Co. v. Cecil Andrus, Secretary of the Interior, Civil No. 79-56 PHX CAM, D. Ariz. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, October 1, 1975.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Assoc., Intervenor, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles, et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 8, 1976.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21; 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Judgment for defendant, November 4, 1977; appeal filed.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall, et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd. & remanded, 408 F. 2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, August 13, 1969.

U.S. v. Charles Maher, et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, April 3, 1973.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira, et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, November 16, 1966; rev'd. & remanded, 403 F. 2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall, et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, December 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969), 32 IBLA 46 (1977)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; aff'd. in part & rev'd. & remanded in part, 534 F. 2d 860 (9th Cir. 1976); no petition.

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969), Reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co., et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, December 8, 1971; dismissed, February 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; vacated & remanded, May 3, 1977; modified amended judgment, September 9, 1977.

U.S. v. G. Patrick Morris, et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Aff'd. in part, rev'd. in part, December 20, 1976; rev'd., November 16, 1978.

U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion); aff'd., 326 F. 2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, March 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, February 24, 1976.

U.S. v. Leonard F. Nelson, IBLA 71-57 (December 6, 1972), (Supp. I), 28 IBLA 314 (1977)

Leonard F. Nelson v. Rogers C. B. Morton, et al., Civil No. A-3-73, D. Alas. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd. & remanded, January 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, January 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995 D. N.M. Dismissed, October 5, 1973; rev'd. & remanded, June 18, 1974; rehearing denied, September 30, 1974; remanded to the Dept. for further proceedings, January 30, 1975; no appeal.

U.S. v. Lloyd O'Callaghan, Sr., et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975), 29 IBLA 333 (1977)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton, et al., Civil No. 73-129-S, S.D. Cal. Aff'd. in part & remanded, May 14, 1974.

U.S. v. Wilma L. Oldaker, A-30378 (August 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alas. Stipulated dismissal with prejudice, March 3, 1967; no appeal.

U.S. v. J. R. Osborne, et al., 77 I.D. 83 (1970), 28 IBLA 13 (1976), reconsideration denied by order dated January 4, 1977

J. R. Osborne, individually & on behalf of R. R. Borders, et al. v. Rogers C. B. Morton, et al., Civil No. 1564, D. Nev. Judgment for defendant, March 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, February 22, 1974; remanded to the Dept. with orders to re-examine the issues, December 3, 1974.

Bradford Mining Corp., Successor of J. R. Osborne, agent for various persons v. Cecil D. Andrus, Secretary of the Interior, Civil No. LV-77-218, RDF, D. Nev. Suit pending.

U.S. v. Pittsburgh Pacific Co., 30 IBLA 388; 84 I.D. 282 (1977)

Pittsburgh Pacific Co. v. U.S., Dept. of the Interior, Cecil Andrus, Joseph W. Goss, Anne Poindexter Lewis, Martin Ritvo, State of South Dakota, Dept. of Environmental Protection & Allen Lockner, Civil No. CIV77-5055, W.D. S.D. Suit pending.

State of South Dakota v. Cecil D. Andrus, Secretary of the Interior, et al., Civil No. CIV 77-5058, W.D. S.D. Dismissed, December 26, 1978.

U.S. v. Paul C. Poncia, et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Remanded to the Secretary of Interior for consideration, September 28, 1976.

U.S. v. Richard C. Porter, et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, December 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin, et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin, et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, January 15, 1960; rev'd. & remanded, 284 F. 2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, March 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F. 2d 615 (1965); judgment for defendant, January 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd., 410 F. 2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam, et al., 1 IBLA 143 (1970)

William D. Pulliam, et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, March 29, 1973; no appeal.

U.S. v. Chester L. Ramsey, 29 IBLA 243 (1977)

Chester Lee Ramsey v. Cecil Andrus, Secretary of the Interior, et al., Civil No. CIV S-77-348-TJM, D. Cal. Suit pending.

U.S. v. Marvin C. Ramsey, et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Ore. Dismissed, May 1, 1975; aff'd., March 22, 1977.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, February 11, 1975; aff'd., October 15, 1976.

U.S. v. Cecil R. Reed, A-30354 (September 29, 1965)

Cecil R. Reed v. Stewart L. Udall, et al., Civil No. 1784, D. Nev. Judgment for defendant, December 19, 1967; aff'd., 416 F. 2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, February 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036, A-31133 (March 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton, et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, October 22, 1971; appeal dismissed, April 18, 1972.

U.S. v. R. E. & Barbara J. Rodgers, 32 IBLA 77 (1977)

R. E. & Barbara Rodgers v. Cecil D. Andrus, Secretary of the Interior, Civil No. 78-119, D. Ore. Suit pending.

U.S. v. Robert A. Rukke, Registered Agent, Valumines, Inc., et al., 32 IBLA 155 (1977)

Robert A. Rukke, Secretary, Valumines, Inc., Milo Moore, William Soren, George Dunlap (aka George Dunlop) & Estate of Eugene Francis Dunlap (aka Gene Dunlop) v. U.S., Civil No. C77-206T, D. Wash. Suit pending.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

Edwin R. Saurers, et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

Charles L. Seeley, et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, December 16, 1964.

U.S. v. Ollie Mae Shearman, et al., 73 I.D. 386 (1966)
See Idaho Desert Land Entries - Indian Hill Group

U.S. v. Silverton Mining & Milling Co., IBLA-70-22 (September 23, 1970)

Multiple Use Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd., 504 F. 2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, December 7, 1961; no appeal.

U.S. v. C. F. Snyder, et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd., 405 F. 2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co., et al. v. Rogers C. B. Morton, et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, November 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny, et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, October 27, 1972.

U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974), 34 IBLA 25 (1978)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, December 23, 1975 (opinion).

Elmer H. Swanson & Livingston Silver, Inc. v. Cecil D. Andrus, Secretary of the Interior, Civil No. CIV-78-4045, D. Idaho. Suit pending.

U.S. v. C. Fred Underwood, et al., 22 IBLA 62 (1975), (amended decision) 22 IBLA 70 (1975)

C. Fred Underwood, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior, Civil No. S-76-91 PCW, E.D. Cal. Judgment for defendant, June 23, 1977; appeal filed October 18, 1977.

U.S. v. U.S. Silica Corp., et al., A-30400 (August 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, September 26, 1969; no appeal.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S., et al., Civil No. 6898 Phx., D. Ariz. Rev'd. & remanded, December 29, 1970; aff'd., 457 F. 2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (April 24, 1966), A-30659 (October 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, March 17, 1971; aff'd., 498 F. 2d 288 (9th Cir. 1974); cert. denied, November 18, 1974.

U.S. v. Oscar W. Weiss, et al., A-30809 (September 14, 1967), 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, January 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (January 8, 1968), A-30805 (Supp.) (April 25, 1969), A-30805 (Supp. II) (November 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, December 12, 1968; remanded to Bureau of Land Mgmt. Time extended to November 1, 1970 to comply with requirements of Supp. II. Judgment for defendant, December 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, January 6, 1967; aff'd., 404 F. 2d 334 (9th Cir. 1968); no petition.

U.S. v. Milton Wichner, 35 IBLA 240 (1978)

Milton Wichner v. Cecil D. Andrus, Secretary of the Interior, Bob Bergland, Secretary of Agriculture, Frank Gregg, Director, BLM, Edward L. Hastey, State Dir. (California), BLM, William T. Dresser, Forest Supervisor of the Angeles National Forest, & U.S., Civil No. CV 78-2804, C.D. Cal. Suit pending.

U.S. v. Frank W. Winegar, et al., 81 I.D. 370 (1974)

Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Judgment for plaintiff, January 17, 1977; aff'd., January 25, 1979.

U.S. v. Rodney Wood, et al., A-30697 (May 31, 1967)

Rodney Wood, et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967; amended complaint filed; judgment for defendant, March 27, 1969; no appeal.

U.S. v. Elodymae Zwang, U.S. v. Darrell Zwang, 26 IBLA 41; 83 I.D. 280 (1976)

Darrell & Elodymae Zwang v. Cecil Andrus, Secretary of the Interior, Civil No. 77-1431 R, D. Cal. Suit pending.

U.S. v. Merle I. Zweifel, et al., 16 IBLA 74 (1974)

Walter H. Burkhardt, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with A. F. Anderson, et al. v. Rogers C. B. Morton, et al., Civil No. C74-151, D. Wyo. for purposes of appeal by order of November 19, 1975. Dismissed, November 28, 1975.

U.S. v. Merle I. Zweifel, et al., 80 I.D. 323 (1973)

Merle I. Zweifel, et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, October 31, 1973.

Kenneth Roberts, et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308 D. Colo. Dismissed with prejudice, 389 F. Supp. 87 (1975); aff'd., 549 F. 2d 158 (10th Cir. 1977).

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough, et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

Paul E. Unruh v. Udall, et al., Civil No. 1894-N, D. Nev. Judgment for defendant, June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton, et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, November 3, 1972; aff'd., September 20, 1974.

Utah Power & Light Co., 14 IBLA 372 (1974)

Utah Power & Light Co. v. Thomas S. Kleppe, in his official capacity as Secretary of the Interior, Civil No. C-76-136, D. Utah. Suit pending.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by order, August 8, 1973, Petition for Reconsideration denied by order, May 29, 1975.

Henrietta Roberts Vaden, a/k/a Henrietta R. Vaden v. Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. A75-223 CIV, D. Alas. Stipulated dismissal, March 31, 1976.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, April 18, 1957; no appeal.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles & Caroline J. Charles (Brendale), 5 IBIA 96; 83 I.D. 209 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior & Phillip Brendale, Civil No. C-76-199, E.D. Wash. Suit pending.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBIA 312, 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B. Morton, et al., Civil No. 72-C-428, D. Wis. Dismissed, 380 F. Supp. 205 (1974); rev'd., September 29, 1975; no petition.

Burt A. Wackerli, et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L. Udall, et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed March 17, 1971; judgment for plaintiff, February 28, 1975.

Estate of Amelia Keyes Abbott Viramontes Walker, IA-1339 (April 5, 1966)

Earlene Ida Abbott Simons v. Udall, et al., Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (April 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd., 409 F. 2d 477 (9th Cir. 1969); no petition.

Estate of Milward Wallace Ward, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth Collins v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. C75-175, D. Wyo. Dismissed, January 1, 1976.

Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, October 26, 1959; satisfaction of judgment entered February 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83; 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton, et al., Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

Mattie Wahwerseer v. Thomas Kleppe, Secretary of Interior, Civil No. CIV-76-0845-E, W.D. Okla. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (February 25, 1963), Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips, et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, February 25, 1964; no appeal.

Western Nuclear, Inc., 35 IBLA 146; 85 I.D. 129 (1978)

Western Nuclear, Inc., a Del. Corp., authorized & doing business in the State of Wyo. v. Cecil Andrus, Secretary of the Interior, & U.S., Civil No. C78-129, D. Wyo. Suit pending.

Richard Wheeler, Jr., 34 IBLA 359 (1978)

Richard Wheeler, Jr. v. The Dept. of Interior & Cecil Andrus, Secretary of the Interior, Civil No. CIV78-0750 T, W.D. Okla. Suit pending.

Estate of John P. Whitetail, IA-T-23 (April 17, 1970)

Doris Ann Whitetail Parker, et al. v. John Pappan, et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, August 17, 1973; no appeal.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D. N.M. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson, et al., Civil No. 1492-59.

Buck Willcoxson v. U.S., Civil No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, August 3, 1961; aff'd., 313 F. 2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co., et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F. 2d 847 (1961); no appeal.

William A. Smith Contracting Co. v. U.S., Ct. Cl. No. 279-59. Judgment for defendant, 292 F. 2d 854 (1961); no appeal.

William F. Klingensmith, Inc., IBCA-717-5-68, IBCA-734-10-68 (May 4, 1971)

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Actions consolidated and transferred to Ct. of Claims January 24, 1972; Ct. Cl. No. 28-72. Dismissed, November 23, 1973.

David L. Williams, A-29858 (February 12, 1963)

Richard L. & Jean S. Hatter, Gary Linn Dusenberry, Jere D. Anderson, & Henry P. Carley d/b/a Chad Enterprise, a Joint Venture v. U.S., Civil No. S74-205, E.D. Cal. Judgment for defendant, August 8, 1975.

Harry H. Wilson, 35 IBLA 349 (1978)

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Estate of Louise Wilson, IA-1380 (March 1, 1966)

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W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

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Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

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Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F. 2d 358 (1962).

State of Wyoming, 27 IBLA 137; 83 I.D. 364 (1976)

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1001-1025 ------34 IBLA 270 (Mar. 31, 1978)
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38 IBLA 373 (Dec. 29, 1978)
1002 ----------34 IBLA 239 (Mar. 28, 1978)
34 IBLA 270 (Mar. 31, 1978)
35 IBLA 29 (May 5, 1978)
36 IBLA 59 (June 30, 1978)
36 IBLA 307 (Aug. 21, 1978)
1002-03 --------38 IBLA 373 (Dec. 29, 1978)
1004 ----------35 IBLA 29 (May 5, 1978)
1004(c) --------33 IBLA 371 (Jan. 23, 1978)
37 IBLA 306 (Oct. 23, 1978)
1007 ----------34 IBLA 285; 85 I.D. 171 (1978)
1014(b) --------36 IBLA 88 (July 12, 1978)
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1251 ----------1 IBSMA 1 (June 15, 1978)
1252 ----------1 IBSMA 6 (June 30, 1978)
1252(c) ---------1 IBSMA 1 (June 15, 1978)
1265 ----------1 IBSMA 6 (June 30, 1978)
1304 ----------38 IBLA 85 (Nov. 15, 1978)

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4332 ----------3 ANCAB 37 (July 3, 1978)
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4601 ----------2 OHA 203 (Aug. 30, 1978)
4601(7)(A) ------2 OHA 206 (Sept. 6, 1978)
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4602(a) ---------2 OHA 169 (Mar. 30, 1978)
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4622 ----------2 OHA 181 (June 21, 1978)
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4622(a) ---------2 OHA 206 (Sept. 6, 1978)
4622(c) ---------2 OHA 206 (Sept. 6, 1978)
4623 ----------2 OHA 169 (Mar. 30, 1978)
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4633 ----------2 OHA 169 (Mar. 30, 1978)
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4651 ----------2 OHA 169 (Mar. 30, 1978)
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38 IBLA 1 (Nov. 8, 1978)
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36 IBLA 201 (Aug. 3, 1978)
185 ----------33 IBLA 277 (Jan. 5, 1978)
36 IBLA 201 (Aug. 3, 1978)
203 ----------35 IBLA 15 (May 4, 1978)
270 ----------34 IBLA 330; 85 I.D. 81 (1978)
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279-284 ---------37 IBLA 33 (Sept. 18, 1978)
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35 IBLA 146; 85 I.D. 129 (1978)
36 IBLA 119 (July 25, 1978)
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315g(b) ---------38 IBLA 160 (Dec. 5, 1978)
315g(d) ---------35 IBLA 146; 85 I.D. 129 (1978)
38 IBLA 160 (Dec. 5, 1978)
315m ----------33 IBLA 262 (Jan. 5, 1978)
35 IBLA 75 (May 12, 1978)
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37 IBLA 153 (Oct. 5, 1978)
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37 IBLA 357 (Oct. 31, 1978)
38 IBLA 262 (Dec. 8, 1978)
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334 ----------34 IBLA 86 (Feb. 22, 1978)
336 ----------34 IBLA 86 (Feb. 22, 1978)
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422d(a) ---------M-36904; 85 I.D. 254 (1978)
422e(b) ---------M-36904; 85 I.D. 254 (1978)
422e(c) ---------M-36904; 85 I.D. 254 (1978)
422f ----------M-36904; 85 I.D. 254 (1978)
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422h ----------M-36904; 85 I.D. 254 (1978)
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423e ----------M-36904; 85 I.D. 254 (1978)
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436 ----------36 IBLA 119 (July 25, 1978)
468 ----------M-36904; 85 I.D. 254 (1978)
485a(c) ---------M-36901; 85 I.D. 297 (1978)
485h ----------M-36901; 85 I.D. 297 (1978)
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485h(a) ---------M-35902; 85 I.D. 326 (1978)
485h(c) ---------35 IBLA 279; 85 I.D. 186 (1978)
485h(d) ---------M-36901; 85 I.D. 297 (1978)
485h(e) ---------M-36901; 85 I.D. 297 (1978)
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521 ----------M-36904; 85 I.D. 254 (1978)
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616 ----------M-36901; 85 I.D. 297 (1978)
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687a-1 ---------33 IBLA 395 (Jan. 30, 1978)
37 IBLA 48 (Sept. 18, 1978)
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697 ----------35 IBLA 79 (May 12, 1978)
703(a) ---------34 IBLA 219 (Mar. 27, 1978)
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733 ----------35 IBLA 370 (June 23, 1978)
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851 ----------3 ANCAB 11; 85 I.D. 219 (1978)
852 ----------3 ANCAB 11; 85 I.D. 219 (1978)
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37 IBLA 215 (Oct. 12, 1978)
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932 ----------35 IBLA 279; 85 I.D. 186 (1978)
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959 ----------33 IBLA 386 (Jan. 26, 1978)
35 IBLA 53 (May 9, 1978)
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35 IBLA 279; 85 I.D. 186 (1978)
35 IBLA 325; 85 I.D. 207 (1978)
36 IBLA 260 (Aug. 15, 1978)
975b ----------38 IBLA 382 (Dec. 29, 1978)
1061 ----------38 IBLA 353 (Dec. 22, 1978)
1064 ----------38 IBLA 353 (Dec. 22, 1978)
1068 ----------35 IBLA 79 (May 12, 1978)
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1068(a) ---------35 IBLA 208 (May 26, 1978)
1068 et seq. ---35 IBLA 208 (May 26, 1978)
37 IBLA 247 (Oct. 18, 1978)
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1166 ----------35 IBLA 79 (May 12, 1978)
37 IBLA 215 (Oct. 12, 1978)
1171 ----------33 IBLA 262 (Jan. 5, 1978)
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34 IBLA 219 (Mar. 27, 1978)
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1334(a)(1) -----36 IBLA 185; 85 I.D. 347 (1978)
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3 ANCAB 111; 85 I.D. 462 (1978)
1601-1629 -------Sec. Order No. 3016; 85 I.D. 1 (1978)
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35 IBLA 349 (June 19, 1978)
1611 ----------3 ANCAB 111; 85 I.D. 462 (1978)
1613(a) ---------2 ANCAB 264 (Jan. 23, 1978)
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1613(c) ---------3 ANCAB 1; 85 I.D. 200 (1978)
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1616(d)(1) -----35 IBLA 349 (June 19, 1978)
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1616(d)(2)(C) --35 IBLA 61 (May 10, 1978)
1621(b) ---------Sec. Order No. 3016; 85 I.D. 1 (1978)
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36 IBLA 4 (June 27, 1978)
37 IBLA 120 (Oct. 3, 1978)
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34 IBLA 219 (Mar. 27, 1978)
35 IBLA 79 (May 12, 1978)
38 IBLA 1 (Nov. 8, 1978)
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1701 (note) ----34 IBLA 219 (Mar. 27, 1978)
1702(j) ---------38 IBLA 347 (Dec. 22, 1978)
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44 STAT:

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61 STAT:

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549 ----------M-36901; 85 I.D. 297 (1978)
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69 STAT:

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70 STAT:

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78 STAT:

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ACCOUNTS
(See also Funds--if included in this Index.)

FEES AND COMMISSIONS

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978) 85 I.D. 186

PAYMENTS

Rental payment which arrives at a BLM State Office after normal business hours, as set out in 43 CFR 1821-1(a) and (d), is properly recorded by BLM as received at 10 a.m. the next business day, per 43 CFR 1821.2-2(d).

Robert L. Wheeler, 33 IBLA 371 (Jan. 23, 1978)

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Annual rental payments on oil and gas leases are sent to depositories designated by the Secretary of the Treasury if their location permits the deposit to be hand carried; otherwise, the deposits are mailed to the Denver Branch of the Kansas City Federal Reserve Bank. Washington, D.C., offices of the Bureau of Land Management may send deposits to the Cash Division of the Treasury Department. All checks drawn on foreign banks or foreign branches of United States banks must be sent for deposit to the Cash Division of the Treasury Department.

An oil and gas lease rental payment check returned to the Bureau of Land Management because a Federal Reserve Bank will not accept for collection checks drawn on foreign banks, but which could be collected through the Cash Division of the Treasury Department and would be honored by the drawee bank, is not "uncollectible."

Pipeline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978) 85 I.D. 70

"Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the

PAYMENTS--Continued

opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges due on an annual basis for the years prior to payment of such amount.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978) 85 I.D. 207

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

ACCOUNTS--Continued

PAYMENTS--Continued

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

REFUNDS

A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Henry A. Alker, 34 IBLA 136 (Mar. 8, 1978)

ACCRETION

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)

85 I.D. 154

ACQUIRED LANDS

Patented lands which are subsequently acquired by the United States for the National Park Service are not, by mere force of acquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws. 30 U.S.C. § 22 (1970).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

ACT OF MARCH 3, 1887

Sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), authorizes, rather than mandates, the issuance of patents to innocent purchasers for value of lands which did not pass to a railroad under a statutory grant because of their mineral character, the rights of any such innocent purchaser being dependent upon the conditions and limitations of the Act of Mar. 3, 1887, 43 U.S.C. § 898 (1970).

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

ACT OF FEBRUARY 15, 1901

Pursuant to the Act of Feb. 15, 1901, repealed by sec. 706(a) of the Act of Oct. 21, 1976 (90 Stat. 2743, 2793), the Department had discretionary authority to permit the use of a right-of-way across public lands to supply water for domestic purposes; however, a right-of-way application for such use was properly rejected where approval of the grant would be contrary to the public interest.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

ACT OF JUNE 25, 1910

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

ACT OF FEBRUARY 25, 1925

"An Act granting public lands to the town of Silverton, Colorado, for public park purposes" (43 Stat. 980, Feb. 25, 1925).

The above Act and the patent issued in accordance therewith require that the lands granted be used for public park purposes only, and the town's attempt to lease a portion of the lands for the construction of camper sites does not violate the Act and patent since the use of a limited part of the patented land for camper sites is consistent with recreational and public park purposes.

Town of Silverton, 35 IBLA 183 (May 23, 1978)

85 I.D. 140

ACT OF JUNE 14, 1926

Where a patent has been issued under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. § 869 et seq. (1970), pursuant to a plan of development, and that plan is modified with the consent of the Bureau of Land Management, the failure to comply with the original plan is excused.

H. B. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

ACT OF MAY 21, 1930

An oil and gas lease offer for lands in a reservoir right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

ACT OF APRIL 23, 1932

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

ACT OF JUNE 18, 1934

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

ACT OF OCTOBER 8, 1964

Where, at the end of its term, a mineral lease affecting lands within the Lake Mead Recreation Area is not in good standing, an application for renewal thereof for an additional 5 years is properly denied. Where the lessee fails to develop the lease property diligently during the term of the lease and does not fall

ACT OF OCTOBER 8, 1964--Continued

within an exception to this requirement, the lease is not in good standing and may not be extended.

Audrine G. Knight, 36 IBLA 53 (June 30, 1978)

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

D. L. Percell, 37 IBLA 272 (Oct. 20, 1978)

ACT OF SEPTEMBER 26, 1968

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), is properly rejected when the Geological Survey reports that such lands are underlain with coal, and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application because conveyance of the surface rights could allow the surface owner, pursuant to the Surface Mining Control and Reclamation Act of 1977, to prevent strip mining of the underlying coal by withholding his consent to mine.

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

ACT OF DECEMBER 24, 1970

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

ACT OF OCTOBER 21, 1976

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of

ACT OF OCTOBER 21, 1976--Continued

1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

ADMINISTRATIVE AUTHORITY
(See also Delegation of Authority, Federal Employees and Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference-right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

Reliance upon erroneous advice by Bureau of Land Management employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

Charles M. Brady, 33 IBLA 375 (Jan. 25, 1978)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A consent decree obtained by the Securities and Exchange Commission establishes no precedent for cases involving different parties. Allegations of Federal securities law violations in connection with Federal oil and gas leasing should be directed to the Securities and Exchange Commission, the agency with jurisdiction over such matters. The jurisdiction of the Board of Land Appeals does not extend to matters exclusively under the jurisdiction of the SEC, but goes to matters involving compliance with oil and gas leasing statutes and regulations.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal Securities Law violations should be directed to the SEC rather than to the Board of Land Appeals.

William Miller, 36 IBLA 349 (Aug. 28, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Established and long-standing Departmental policy relating to the administration of the simultaneous oil and gas leasing system is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

Erroneous or incomplete advice by Bureau of Land Management employees cannot operate to vitiate an Act of Congress, particularly where the governing statute and regulations on the issue are free from ambiguity.

Public Service Co. of Oklahoma, 38 IBLA 193 (Dec. 6, 1978)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

ESTOPPEL

The failure of a mining claimant to file the notice of recordation reguired by sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and appellant's representatives.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the conseguences imposed by a statute for his failure to comply with its requirements.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acguiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

The Government is not barred from declaring a mining claim null and void by the doctrine of laches.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Even though the Bureau of Land Management from Jan. 26, 1972, to Aug. 19, 1977, considered preference-right coal lease applications in a pending status, it is not estopped to reject such applications as having been filed late because it has not been demonstrated that appellant relied on the Bureau's representations to appellant's detriment.

Thermal Energy Co., et al., 36 IBLA 334 (Aug. 28, 1978)

Where national forest land is open to mineral location, the failure of a district forest ranger to object to the location or development of mining claims for a number of years, or to reguest that a contest of the validity of the claims be initiated, does not estop the United States from bringing a contest, nor is the contest barred by laches.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

Reliance upon erroneous or incomplete information provided by Government employees cannot create any rights not authorized by law. 43 CFR 1810.3(c).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

ADMINISTRATIVE AUTHORITY--Continued

LACHES

Where unpatented mining claims were located some 50 years before the claimant filed application for patent, during which time they went unchallenged by the Government, the United States is not barred from contesting the validity of the claims by invocation of the equitable defense of laches.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Where national forest land is open to mineral location, the failure of a district forest ranger to object to the location or development of mining claims for a number of years, or to reguest that a contest of the validity of the claims be initiated, does not estop the United States from bringing a contest, nor is the contest barred by laches.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acguiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in eguitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

ADMINISTRATIVE PRACTICE

A reguirement to submit a "certified copy" of a private agreement is satisfied by the submission of a copy of the agreement with a statement that it is a copy of that agreement.

Ricky L. Gifford, 34 IBLA 160 (Mar. 10, 1978)

Where the Director, BLM, in a general instruction to all Bureau offices, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

Margaret A. Ruggiero, et al., 34 IBLA 171 (Mar. 14, 1978)

W. C. Yahmel, 34 IBLA 377 (May 1, 1978)

ADMINISTRATIVE PRACTICE--Continued

Remedies for an alleged breach of a private lease agreement involving preference lands for a sec. 15 grazing lease must be sought in the appropriate courts and not before the Department of the Interior, which has no jurisdiction over such matters.

Evelyn Elsman, 35 IBLA 23 (May 5, 1978)

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

Where the Director of the Bureau of Land Management issues a general instruction to all BLM offices specifying which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers and directing that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

Raymond A. Berry, et al., 35 IBLA 386 (June 27, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

Established and long-standing Departmental policy relating to the administration of the simultaneous oil and gas leasing system is binding on all employees of the

ADMINISTRATIVE PRACTICE--Continued

Bureau of Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 et seq. (1976).

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

The mere fact that the witnesses, the administrative law judge, and members of the Board of Land Appeals are employees of the Department of the Interior does not establish unfairness in the contest proceeding.

A Forest Service mineral examiner who is a witness in a Government contest of a mining claim is not disqualified nor is his testimony discredited merely because he is an employee of that agency.

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside for bias, a substantial showing of personal bias must be made.

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

Public notice and hearing is not required by the Code of Federal Regulations prior to closure of areas of the public lands to outdoor recreation use pursuant to 43 CFR 6010.4, implementing the multiple use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732 and 1733 (1976).

While an appeal of one decision of the BLM is pending before the Board, the BLM is without authority to exercise jurisdiction in the matter which is the subject of the appeal. Where the BLM exercises jurisdiction and the subsequent decision presents the same issue as the first, and the parties are given an adequate opportunity at the hearing and on appeal to present evidence

ADMINISTRATIVE PRACTICE--Continued

and argue as to this issue, the Board will proceed to consider both decisions on their merits.

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

ADMINISTRATIVE PROCEDURE
(See also Appeals, Contests and Protests, Hearings, Rules of Practice--if included in this Index.)

GENERALLY

A land use permit which, by its own terms, is subject to termination after failure of the permittee to comply with its provisions, may be revoked by BLM where the permittee has been requested to discontinue an unauthorized use and thereafter fails to correct the breach.

Charles W. Shell, et al., D-78-3 (Nov. 15, 1977)

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

Pancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

Under 43 CFR 4.401(a), a notice of appeal to the Board of Land Appeals may be considered even if not filed within the 30-day appeal period, where it is filed within 10 days of the deadline date and is transmitted within the appeal period.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

Where the Bureau of Land Management brings a contest complaint against unpatented mining claims, naming as contestee only the estate of the deceased claimant, proper service of process upon the court appointed administrator, executor, or personal representative of the deceased claimant is necessary in order to affect the interests of all the heirs of the deceased.

Heirs of a deceased mining claimant who personally respond without protest or objection to a Government contest complaint which names as contestee only the estate of their intestate decedent will be bound by the result of such contest insofar as it purports to affect their interest in that estate, even though service on the estate itself was faulty.

United States v. Estate of W. R. Wood, 34 IBLA 44 (Feb. 16, 1978)

The Federal Rules of Civil Procedure are not binding on administrative agencies.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Where unpatented mining claims were located some 50 years before the claimant filed application for patent, during which time they went unchallenged by the Government, the United States is not barred from contesting the validity of the claims by invocation of the equitable defense of laches.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

ADJUDICATION

Where the entryman makes admissions and submits evidence which establish conclusively that his failure to "prove up" his desert land entry during its initial term and two extensions was not the result of unavoidable delay, and that the failure was not without fault on his part, no further administrative proceedings are

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

required prior to rejecting his application for a third extension.

Thomas D. Hickey, 34 IBLA 86 (Feb. 22, 1978)

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

If a grazing lease, canceled in part for loss of control of preference lands, expires by its terms prior to decision on the appeal of the cancellation and if the grazing lease is renewed solely because the appellate decision has not been rendered, with no consideration of the lessee's or conflicting preference rights, the Board of Land Appeals will consider the appeal of the cancellation as applicable to the renewed lease.

Evelyn Elsman, 35 IBLA 23 (May 5, 1978)

Where the evidence in an administrative appeal raises countervailing legal presumptions of equal probative worth, a factfinding hearing may be ordered pursuant to 43 CFR 4.415.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

ADMINISTRATIVE LAW JUDGES

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard H. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES--Continued

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

ADMINISTRATIVE PROCEDURE ACT

Under the circumstances of this case, appellant's paternity is not an issue cognizable by the Department in probating her mother's will. In accordance with sec. 8(b) of the Administrative Procedure Act findings should be limited to issues necessary to the disposition of a case.

A full and true disclosure of the facts was denied when only the presiding judge was permitted to ask questions of a crucial witness. This procedure violated sec. 7(c) of the Administrative Procedure Act.

Estate of Rena Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

The Department of the Interior is lawfully empowered to initiate a contest pursuant to the Administrative Procedure Act to determine the validity of unpatented mining claims. This procedure makes no provision for 1) trial by jury, 2) advice to the contestant concerning his constitutional rights, 3) compensation to the contestant for the value of the claim if it is found to be invalid, or 4) appointment by the Department of qualified counsel to represent the contestant; and this procedure does not violate constitutional guarantees of due process, the General Mining Law, or the Administrative Procedure Act. Presentation of the contestant's case by counsel employed by the Forest Service in appropriate cases is permissible, and Federal employees may testify as witnesses, and may conduct examinations and secure mineral samples on unpatented mining claims without a search warrant.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Where a qualifying discovery of mineral has been made by a permittee during the term of a permit, a coal preference-right lease application need not be rejected because it was filed after the permit expired.

Thermal Energy Co., et al., 36 IBLA 334 (Aug. 28, 1978)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 et seq. (1976).

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Sec. 9(b) of the Administrative Procedure Act, as amended, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (West Supp. 1977), removed the Secretary of the Interior's discretion to grant extensions, applications for preference-right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

ADMINISTRATIVE REVIEW

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a regulation of this Department.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

A decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

BURDEN OF PROOF

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Andrew J. Van Derpoel, et al., 33 IBLA 248 (Jan. 5, 1978)

United States v. Clark J. Guild, et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

United States v. Wesley C. Miles, Sr., 36 IBLA 213 (Aug. 3, 1978)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Where the claimant presents evidence of returns which are so meager that they will not attract the labor and means of a person of ordinary prudence, he has failed to prove by a preponderance of the evidence that his claim is valid, and it is properly declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

When the Government contests a mining claim on a charge of lack of discovery, of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of validity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

United States v. Larry Joseph Timm, 36 IBLA 316 (Aug. 23, 1978)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

When the Government contests a mining claim on a charge of no discovery it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. Loren E. Burns, et al., 38 IBLA 97 (Nov. 20, 1978)

Once the Government has established a prima facie case that no discovery of a valuable mineral deposit has been made within a mining claim, the burden of proof shifts to the contestee to establish by a preponderance of the evidence the existence of a discovery.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

Where arguably conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM resolving the conflict unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the intended purpose, or that there is sufficient reason to change the result.

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

ADMINISTRATIVE PROCEDURE--Continued

HEARING EXAMINERS

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside for bias, a substantial showing of personal bias must be made.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

HEARINGS

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

Andrew J. Van Derpoel, et al., 33 IBLA 248 (Jan. 5, 1978)

United States v. Clark J. Guild, et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

A request for a hearing will be denied in the absence of an assertion of fact which, if proved true, would entitle appellant to the relief sought.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence conld be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an administrative law judge's decision declaring the claim null and void will be affirmed.

United States v. Thelma O. Crismon, 34 IBLA 381 (May 2, 1978)

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

James Messano, 35 IBLA 383 (June 23, 1978)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard H. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

The Government has established a prima facie case of nondiscovery when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decision-maker, that the decision-maker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 et seq. (1976).

The mere fact that the witnesses, the administrative law judge, and members of the Board of Land Appeals are employees of the Department of the Interior does not establish unfairness in the contest proceeding.

A Forest Service mineral examiner who is a witness in a Government contest of a mining claim is not disqualified nor is his testimony discredited merely because he is an employee of that agency.

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

In order to sustain a charge that an administrative law judge should be disqualified or his decision set aside for bias, a substantial showing of personal bias must be made.

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants.

United States v. Loren E. Burns, et al., 38 IBLA 97 (Nov. 20, 1978)

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

INITIAL DECISION

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

Evelyn Elsman, 35 IBLA 23 (May 5, 1978)

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

JUDICIAL REVIEW

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

LICENSING

Where a qualifying discovery of mineral has been made by a permittee during the term of a permit, a coal preference-right lease application need not be rejected because it was filed after the permit expired.

Thermal Energy Co., et al., 36 IBLA 334 (Aug. 28, 1978)

Sec. 9(b) of the Administrative Procedure Act, as amended, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (West Supp. 1977), removed the Secretary of the Interior's discretion to grant extensions, applications for preference-right leases filed after expiration of the initial 2-year permit term, and

ADMINISTRATIVE PROCEDURE--Continued

LICENSING--Continued

during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978) 85 I.D. 396

RULE MAKING

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

STANDING

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

SUBSTANTIAL EVIDENCE

In a hearing held pursuant to the Administrative Procedure Act, evidence sufficient to support a decision must be reliable, probative, and substantial. 5 U.S.C. § 556(d) (1976).

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

AGENCY

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

Frederick C. Farrington, George M. Hoffman, 36 IBLA 70 (June 30, 1978)

AGENCY--Continued

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

ALASKA

ALASKA NATIVE CLAIMS SETTLEMENT ACT

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V, 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

GRAZING

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V, 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Neither an application for an Alaska grazing lease nor an application for assignment of a grazing lease confer upon the applicant a right to a lease, the granting thereof being discretionary and subject to any changes in Secretarial policy.

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

HEADQUARTERS SITES

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

In contest hearing on headquarters site claim, evidence must be submitted from which it can be concluded that applicant was engaged in actual business operation from which he reasonably hoped to derive a profit.

Where evidence showed that in 5 years during which applicant was allowed to prove up headquarters site, applicant went out trapping only "four or five times" in 1970 and again in 1971, did not realize more than $20 from sale of pelts but did retain a lynx pelt and two beaver pelts for himself, administrative law judge

ALASKA--Continued

HEADQUARTERS SITES--Continued

properly rejected application to purchase headquarters site under 43 U.S.C. § 687a (1970).

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

HOMESTEADS

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

A homestead claimant in Alaska may be given credit for residence, cultivation and improvements after the time his homestead application is filed but before allowance of entry where the land was subject to appropriation by him or included in an entry against which he had initiated a contest resulting in cancellation of the entry.

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

The mere fact homestead final proof in Alaska is filed before allowance of the homesteader's application for entry does not preclude consideration of the final proof if entry is allowed.

John P. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not

ALASKA--Continued

HOMESTEADS--Continued

raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

MINING CLAIMS

A mining claim located on land in Alaska at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Where the Bureau of Land Management records reveal that lands in Alaska have been withdrawn under PLO 5250 and certain of those lands have not been recommended, pursuant to sec. 17(d)(2)(C), Alaska Native Claims Settlement Act of Dec. 18, 1971, 43 U.S.C. § 1616(d)(2)(C) (Supp. IV, 1974), for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems within 2 years of the date of the Act, such lands do not nevertheless become available for appropriation under the mining laws. This conclusion is compelled by the reason that PLO 5250 is based upon E.O. 10355, which not only invokes 43 U.S.C. §§ 141-142 (1970), but also the President's general or inherent authority to withdraw public lands completely from mining location.

Sally Lester, et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

NATIVE ALLOTMENTS

Issuance of a certificate of allotment vests full title to the parcel concerned in the allottee, notwithstanding the fact that the Department retains the right to approve a subsequent sale of the parcel by the allottee.

State of Alaska, 35 IBLA 140 (May 22, 1978)

STATEHOOD ACT

Lands tentatively approved for State selection and conveyed by the State to municipalities or boroughs prior to enactment of ANCSA are not available for Native selection under ANCSA.

Lands tentatively approved for State selection and leased by the State to individuals with an option to buy will, if selected by a Native corporation, be included in the interim conveyance with the provision that the option to buy may be exercised against the Native corporation. Where the option had been exercised against the State and a State patent issued prior to the enactment of ANCSA, the land will be excluded from interim conveyance to the Native corporation.

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title

ALASKA--Continued

STATEHOOD ACT--Continued

between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977)
85 I.D. 1

TOWNSITES

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite regulations may be applied in the disposition of Native townsite lands.

The person or persons who may be awarded a deed to a lot in a townsite are those individuals who occupied the lot on the date of final subdivisional survey or were entitled to such occupancy, or their assigns thereafter.

Where there are conflicting claimants to lots in a Native townsite and the record does not clearly reflect who occupied or who was entitled to occupancy of the lots on the date of final subdivisional survey, the matter will be remanded for clarification.

Nancy A. Delkittie, 35 IBLA 370 (June 23, 1978)

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

TRADE AND MANUFACTURING SITES

Where evidence shows that as of final day of 5-year statutory period for proving up a trade and manufacturing site, claimant's business on site was only prospective, concept of substantial compliance may not properly be invoked to bring claimant within bounds of legal requirements for proving up of such a site. Such evidence showed rough completion of golf course in final month of entry, only $120 gross receipts, and three lifetime memberships in exchange for labor expended in construction of golf course.

Contestee's rights, if any, in trade and manufacturing site claim had to be earned prior to Nov. 23, 1966 (the expiration date of the entry), and no action by BLM after that date could prejudice contestee since the evidence shows her failure to meet requirements during the statutory period. Accordingly, Board rejects equitable estoppel and laches arguments based on asserted BLM actions in 1967 and thereafter.

Since contestee has shown no prejudice suffered as result of delay by BLM in bringing contest, the Board concludes that there is no reason for dismissal of contest based on "reasonable time" provision of 5 U.S.C. § 555(b) (1970).

United States v. Barbara Jean Hill, 33 IBLA 395 (Jan. 30, 1978)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Where land within a trade and manufacturing site is withdrawn from appropriation prior to cognizable occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, an invalid claim cannot be perfected, and appellant has not shown wherein she is entitled to equitable adjudication under 43 CFR 1871.1.

Sandy Fondy, 37 IBLA 48 (Sept. 18, 1978)

A cattle feedlot operation, including cattle handling facilities, grain storage, and logging operations falls within the statutory requisite of "trade, manufacture or other productive industry" as used in the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), notwithstanding, that a feedlot operation in Alaska may differ in certain respects from a feedlot operation in the lower 48 States.

United States v. Omar Stratman, 37 IBLA 352 (Oct. 30, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)

GENERALLY

Lands tentatively approved for State selection and conveyed by the State to municipalities or boroughs prior to enactment of ANCSA are not available for Native selection under ANCSA.

Lands tentatively approved for State selection and leased by the State to individuals with an option to buy will, if selected by a Native corporation, be included in the interim conveyance with the provision that the option to buy may be exercised against the Native corporation. Where the option had been exercised against the State and a State patent issued prior to the enactment of ANCSA, the land will be excluded from interim conveyance to the Native corporation.

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977)
85 I.D. 1

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation pursuant to sec. 14(a) of ANCSA.

U.S. Fish and Wildlife Service, 2 ANCAB 264 (Jan. 23, 1978)

Appeal of State of Alaska, 2 ANCAB 284 (Feb. 1, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

GENERALLY--Continued

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation of 69,120 acres of land pursuant to sec. 14(a) of ANCSA.

Appeal of Omar Stratman, et al., 2 ANCAB 329 (Mar. 23, 1978)

Where the Bureau of Land Management records reveal that lands in Alaska have been withdrawn under PLO 5250 and certain of those lands have not been recommended, pursuant to sec. 17(d)(2)(C), Alaska Native Claims Settlement Act of Dec. 18, 1971, 43 U.S.C. § 1616(d)(2)(C) (Supp. IV, 1974), for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems within 2 years of the date of the Act, such lands do not nevertheless become available for appropriation under the mining laws. This conclusion is compelled by the reason that PLO 5250 is based upon E.O. 10355, which not only invokes 43 U.S.C. §§ 141-142 (1970), but also the President's general or inherent authority to withdraw public lands completely from mining location.

Sally Lester, et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

As an amendment to the Alaska Native Claims Settlement Act, P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV, 1974)), is subject to both the provisions of ANCSA and the regulations promulgated to implement ANCSA, unless such provisions or regulations conflict with, or are specifically excepted or preempted in the amendment.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978) 85 I.D. 462

ADMINISTRATIVE PROCEDURE

Generally

Absent another party aligned in interest with the appellants or other reasons justifying continuance of the appeal, an appeal will be dismissed when the appellants before the Board withdraw their appeal.

Appeal of Natives of Akhiok, Inc., 2 ANCAB 275 (Jan. 27, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA,

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws the appeal.

Appeal of Derrell R. Short, 2 ANCAB 298 (Feb. 13, 1978)

Appeal of State of Alaska, Department of Fish and Game, 2 ANCAB 325 (Mar. 9, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 74 (Aug. 10, 1978)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer,

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the remaining appellant before the Board withdraws its appeal.

Appeal of City of Kodiak and In the Matter of Port Lions Native Corp., 3 ANCAB 85 (Sept. 14, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board requests that the appeal be dismissed.

Appeal of J. Bruce Crow, 3 ANCAB 96 (Nov. 20, 1978)

Appeal of Doyon, Ltd., 3 ANCAB 105 (Dec. 11, 1978)

Decisions

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

When a Secretarial decision purports to decide multiple appeals designated by docket numbers in the caption, all interests included within each group of appeals designated by a docket number are adjudicated by such a decision.

Appeal of Gayle D. Fogelson, 2 ANCAB 316 (Mar. 2, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ADMINISTRATIVE PROCEDURE--Continued

Estoppel

The State Director, Bureau of Land Management, is not estopped from denying appellant's (Village Corporation) application for certain lands because BLM erroneously included those lands on its land records and on the map of lands sent to appellant as eligible for withdrawal under sec. 11(a)(1) of ANCSA.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978) 85 I.D. 97

Interim Conveyance

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977) 85 I.D. 1

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

An interim conveyance is the conveyance of title to unsurveyed lands, subject to the reservations set forth in sec. 14(c) and other sections of ANCSA, and in other provisions of law.

Appeal of Kodiak Island Setnetters Assoc., 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Appeal of Mark A. Wartes, et al., 3 ANCAB 21 (June 21, 1978)

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 65 (July 11, 1978)

ALASKA NATIVE CLAIMS APPEAL BOARD

Administrative Procedure

Standing

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that an offeror for a noncompetitive oil and gas lease

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Administrative Procedure--Continued

Standing--Continued

does not have standing under 43 CFR 4.902 to appeal a BLM decision to reject his lease offer, or to issue a conveyance to a Native Corporation under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

In the absence of any interest in the lands in issue, the appellant has no standing to raise the necessity of a sec. 3(e) determination.

Appeal of State of Alaska, 3 ANCAB 11 (June 20, 1978)
85 I.D. 219

Appeals

Generally

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where Departmental policy is to expedite conveyances under ANCSA by rejecting noncompetitive oil and gas leases which conflict with conveyances under ANCSA, and the Secretary has announced that oil and gas leases

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

will not be issued as a consequence of administrative appeals, the Board interprets this policy as a mandate to affirm a BLM decision rejecting a noncompetitive oil and gas lease offer because of conflict with a conveyance under ANCSA.

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which statements of reasons and standing may be filed.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

Dismissal

An appeal to the Alaska Native Claims Appeal Board will be dismissed as being untimely filed when the appellant fails to file a Notice of Appeal within the time limits set forth in 43 CFR 2650.7(d).

Appeal of Mark J. Cottini, 2 ANCAB 327 (Mar. 22, 1978)

Jurisdiction

Where the Secretary, pursuant to regulations in 43 CFR 4.5, takes original jurisdiction of a case and renders a final decision, the Board is bound by his findings, conclusions, and statements of Departmental policy.

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

All challenges to the validity of ANCSA are beyond the jurisdiction of an administrative adjudicative body organized to decide appeals under that statute.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Jurisdiction--Continued

After expiration of the period in which a decision finding a village eligible may be appealed, and the village has been certified as eligible for benefits under sec. 11 of ANCSA, the Board has no jurisdiction over an appeal challenging the eligibility of the village and will dismiss such an appeal.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 363 (Mar. 31, 1978)

Until such time as the Village Corporation makes a determination of the appellants' rights claimed under sec. 14(c) of ANCSA, this Board lacks jurisdiction to hear appellants' appeal concerning such rights.

Appeal of Kodiak Island Setnetters Assoc., 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Appeal of Mark A. Wartes, et al., 3 ANCAB 21 (June 21, 1978)

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 65 (July 11, 1978)

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interest in the lands, including mineral leases.

All challenges to the validity of ANCSA are beyond the jurisdiction of an administrative adjudicative body organized to decide appeals under that statute.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

The effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of such an interest is in a judicial proceeding and the Board lacks jurisdiction to decide the issue.

Appeal of Choggiung, Ltd., 3 ANCAB 100 (Nov. 20, 1978)

Parties

Where multiple appellants are listed on an Appendix to the appellants' Statement of Facts and Reasons, and such Appendix incorporates by reference a list of additional individuals (listed as simultaneous drawing drawees by land description, drawing card number, name and address), the incorporation by reference of the second list is sufficient to identify the individuals and interests designated thereon as appellants.

Appeal of Gayle D. Fogelson, 2 ANCAB 316 (Mar. 2, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Res Judicata

A prior decision of the Department will not be overturned by this Board where the claimant has failed to prosecute an appeal from such decision and in essence acquiesced to the decision for a prolonged period of time.

Appeal of State of Alaska, 3 ANCAB 11 (June 20, 1978) 85 I.D. 219

Standing

Pursuant to regulations in 43 CFR Part 4, Subpart J, 4.902, a party may bring an appeal before the Alaska Native Claims Appeal Board if it (1) "claims a property interest in land" that is (2) "affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed," or is an agency of the Federal Government, or in cases involving land selection is a Regional Corporation.

The mere assertion by an appellant that he "frequently uses" land which might be conveyed to a Village Corporation under the Alaska Native Claims Settlement Act, is insufficient by itself to constitute a claim of "property interest in land affected by a determination appealable to the Alaska Native Claims Appeal Board" as is required by 43 CFR Part 4, Subpart J, 4.902, to bring an appeal before this Board.

An assertion by an appellant that a Village Corporation might alter its selection pattern if an appeal of an entitlement determination is successful, is insufficient to show that an appellant's property interest in land is affected by a determination appealable to this Board as required by 43 CFR Part 4, Subpart J, 4.902, when the Village Corporation would be entitled to select the disputed land regardless of the outcome of an appeal from the entitlement determination.

Appeal of Omar Stratman, et al., 2 ANCAB 329 (Mar. 23, 1978)

The appropriate test for determining whether or not a party has standing to bring an appeal before the Alaska Native Claims Appeal Board is not whether such party is an "aggrieved party" but whether such party "claims a property interest in land affected by a determination from which an appeal to the ANCAB is allowed," or is an agency of the Federal Government, or in cases involving land selection is a Regional Corporation.

The mere assertion of recreational use of a bank of a river by an appellant or appellants does not by itself constitute a claim of "property interest" which is required by 43 CFR Part 4, Subpart J, 4.902, to bring an appeal before this Board.

Appeal of Sam E. McDowell, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of George C. Stek, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of David F. Botens, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of John P. Ellison, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Robert W. Ward, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Reino O. Huttunen, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Lew Erhart, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Alfred M. Noble, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of S. E. Eriksson, 2 ANCAB 350 (Mar. 28, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

Appeal of Kenneth E. Chamberlain, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Walter Galetti, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Gesena M. Galetti, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of John W. Scott, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of Dorothea Taylor, 2 ANCAB 350 (Mar. 28, 1978)

Appeal of George Murphy, 2 ANCAB 350 (Mar. 28, 1978)

The mere allegation of ownership and use of State and Federal lands as members of the public does not constitute a claim of "property interest in land" as is required for standing by 43 CFR 4.902, and, therefore, the appellant lacks standing to bring an appeal before the Board.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 363 (Mar. 31, 1978)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

To have standing to bring an appeal before this Board, an appellant other than a regional corporation or an agency of the Federal Government, must make a claim of property interest in land affected by a determination appealable to this Board.

Appeal of Lois A. Mayer, 3 ANCAB 77 (Aug. 17, 1978)

Where the lands in which an appellant claims a property interest are not included in the decision to convey, and appellant fails to show any connection between such land and land interests which are conveyed pursuant to such a decision, the Board finds that appellant has failed to meet the requirement for standing set forth in 43 CFR 4.902 and the appeal must therefore be dismissed.

Appeal of Morpac, Inc., 3 ANCAB 89 (Oct. 24, 1978)

Statement of Reasons

The Board will accept appeals from decisions rejecting noncompetitive oil and gas lease offers based on conflicts with interim conveyances under ANCSA, but will dismiss such appeals after elapse of the 30-day period in which Statements of Reasons and Standing may be filed.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Statement of Reasons--Continued

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Summary Dismissal

Absent another party aligned in interest with the appellants or other reasons justifying continuance of the appeal, an appeal will be dismissed when the appellants before the Board withdraw their appeal.

Appeal of Natives of Akhiok, Inc., 2 ANCAB 275 (Jan. 27, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws the appeal.

Appeal of Derrell R. Short, 2 ANCAB 298 (Feb.13, 1978)

Appeal of State of Alaska, Department of Fish and Game, 2 ANCAB 325 (Mar. 9, 1978)

Appeal of Kodiak Island Borough, 3 ANCAB 74 (Aug. 10, 1978)

An appeal will be dismissed for lack of diligent prosecution when the appellant fails to comply with an Order of the Board requiring a showing of cause or the filing of other documents.

Appeal of William B. Torgramsen, 2 ANCAB 371 (May 9, 1978)

Appeal of Jack E. Alexander, 2 ANCAB 376 (May 9, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the remaining appellant before the Board withdraws its appeal.

Appeal of City of Kodiak and In the Matter of Port Lions Native Corp., 3 ANCAB 85 (Sept. 14, 1978)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board requests that the appeal be dismissed.

Appeal of J. Bruce Crow, 3 ANCAB 96 (Nov. 20, 1978)

Appeal of Doyon, Ltd., 3 ANCAB 105 (Dec. 11, 1978)

An appeal will be summarily dismissed when, in response to a motion to show cause, the appellant states in writing it has no objection to the dismissal.

Appeal of Kodiak Island Borough, 3 ANCAB 108 (Dec. 18, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Dismissal

Generally

An appeal will be dismissed for lack of diligent prosecution when the appellant fails to file with the Board and to serve upon all parties required to be served a Statement of Facts for Standing as required by 43 CFR 4.903, or any other document which discloses a claim of property interest in land required for standing to appeal by 43 CFR 4.902, and further fails to comply with an Order of the Board requiring a showing of cause.

Appeal of Omar Stratman, et al., 2 ANCAB 269 (Jan. 26, 1978)

Appeal of Omar Stratman, et al., 2 ANCAB 272 (Jan. 26, 1978)

CONVEYANCES

Generally

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that an offeror for a noncompetitive oil and gas lease does not have standing under 43 CFR 4.902 to appeal a BLM decision to reject his lease offer, or to issue a conveyance to a Native Corporation under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (Supp. IV, 1974), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Where, pursuant to Departmental regulations, a party must claim a property interest in land affected by a decision in order to have standing to appeal such a decision, and the Secretary has found as a matter of law that a noncompetitive oil and gas lease offeror has no property interest in his offer, the Board finds that offerors for noncompetitive oil and gas leases do not have standing under 43 CFR 4.902 to appeal a BLM decision to issue conveyance to a Native Corporation under ANCSA.

Where interim conveyance has been issued for the lands embraced by oil and gas lease offers, the Department no longer has jurisdiction over the lands and has no authority to convey any interests in the lands, including mineral leases.

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (Supp. IV, 1974), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

The Board vacates its previous ruling that BLM's rejection of a noncompetitive oil and gas lease offer,

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

CONVEYANCES--Continued

Generally--Continued

because of conflict with an ANCSA conveyance, constitutes final agency action from which no appeal will lie.

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

LAND SELECTIONS

Generally

Lands available for selection by a Regional Corporation under sec. 12 of ANCSA are limited to those lands withdrawn pursuant to sec. 11 of ANCSA.

Sec. 17(d)(2)(E) of ANCSA is not intended to provide lands for selection by a Regional Corporation in addition to lands withdrawn for selection pursuant to sec. 11 of ANCSA. Sec. 17(d)(2)(E), rather, is intended to postpone the time within which the Regional Corporations may receive patent to any lands under dual withdrawal until Congress has first acted upon the same or has failed to act within the 5-year period mandated by sec. 17(d)(2)(D).

Appeal of Doyon, Ltd., 2 ANCAB 336 (Mar. 22, 1978)

Regional Corporations

A land selection application filed pursuant to secs. 12(b)(1), 12(b)(3), and 14(h)(1) of the Alaska Native Claims Settlement Act must conform to the regulations promulgated under the statute as enacted at the time the application is filed unless a later amendment to the statute provides otherwise.

Neither P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV, 1974)), nor the Terms & Conditions incorporated in the amendment, contain language which conflicts with, excludes, or preempts ANCSA regulations 43 CFR 2650.2(e)(1) and (2) requiring a legal description of lands applied for pursuant to ANCSA, or 43 CFR 2653.5(f) requiring a description and location of historical sites selected pursuant to sec. 14(h)(1) of ANCSA.

A land selection application filed pursuant to secs. 12(a)(1), 12(a)(3), and 14(h)(1) of ANCSA containing only a metes and bounds description of the exterior boundaries of a region, does not meet the requirements for a legal description of 43 CFR 2650.2(e)(1) and (2) and 2653.5(f).

A land selection determined finally to be invalid pursuant to ANCSA or its implementing regulations is not protected within the meaning of sec. 22(h)(1) after the date of terminations.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978) 85 I.D. 462

Section 14(c)

The reservation in the decision to convey, stating that conveyance to the Village Corporation is subject to the requirements of sec. 14(c) of ANCSA, protects rights in use and occupancy of the land, if any, claimed by appellants under sec. 14(c), until the date of the patent of the land to the Village Corporation, at which time the village must make a determination as to these appellants' rights under sec. 14(c).

Until such time as the Village Corporation makes a determination of the appellants' rights claimed under

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Section 14(c)--Continued

sec. 14(c) of ANCSA, this Board lacks jurisdiction to hear appellants' appeal concerning such rights.

Appeal of Kodiak Island Setnetters Assoc., 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Appeal of Mark A. Wartes, et al., 3 ANCAB 21 (June 21, 1978)

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

The reservation in the decision to convey, stating that conveyance to the Village Corporation is subject to the requirements of sec. 14(c) of ANCSA, protects whatever rights appellant may have pursuant to sec. 14(c), until the date of the patent of the land to the Village Corporation, at which time the village must make a determination as to the appellant's rights under sec. 14(c).

Until such time as the Village Corporation makes a determination of the appellant's rights claimed under sec. 14(c) of ANCSA, this Board lacks jurisdiction to hear appellants' appeal concerning such rights.

Appeal of Kodiak Island Borough, 3 ANCAB 65 (July 11, 1978)

Third-Party Interests

Sec. 22(i) of ANCSA, 43 U.S.C. § 1621(i) (Supp. IV, 1974), does not authorize the issuance of mineral leases on lands to be conveyed under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

Valid Existing Rights

Sec. 14(g) of ANCSA protects existing permits as valid existing rights and provides that patent is to be subject to the right of the permittee to the complete enjoyment of all rights, privileges, and benefits granted to him by the permit.

An expired special use permit is not an existing right and does not constitute a "valid existing right" under sec. 14(g) of ANCSA.

Use and occupancy of land under a permit from the U.S. Fish and Wildlife Service does not constitute a "valid existing right" in the land separate from the permittee's rights under the permit.

Appeal of Kodiak Island Setnetters Assoc., 3 ANCAB 1 (June 12, 1978) 85 I.D. 200

Mere use and occupancy of a tract of land does not constitute a "valid existing right" pursuant to sec. 14(g) of ANCSA when neither the persons claiming such right nor their predecessors entered the land under any State or Federal law.

Appeal of Mr. & Mrs. G. Gregory Moo, 3 ANCAB 27 (June 26, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

LAND SELECTIONS--Continued

Village Selections

The State Director, Bureau of Land Management, is not estopped from denying appellant's (Village Corporation) application for certain lands because BLM erroneously included those lands on its land records and on the map of lands sent to appellant as eligible for withdrawal under sec. 11(a)(1) of ANCSA.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978) 85 I.D. 97

NATIVE VILLAGE LAND SELECTIONS

Generally

Lands tentatively approved for State selection and conveyed by the State to municipalities or boroughs prior to enactment of ANCSA are not available for Native selection under ANCSA.

Lands tentatively approved for State selection and leased by the State to individuals with an option to buy will, if selected by a Native corporation, be included in the interim conveyance with the provision that the option to buy may be exercised against the Native corporation. Where the option had been exercised against the State and a State patent issued prior to the enactment of ANCSA, the land will be excluded from interim conveyance to the Native corporation.

Third party rights created by the State in lands selected by Natives under ANCSA should be identified by BLM in the decision to issue interim conveyance if possible, but need not be adjudicated.

ANCSA and the implementing regulations draw a basic distinction between valid existing rights leading to the acquisition of title and those of a temporary nature, requiring exclusion of the former from the interim conveyance but inclusion of the latter with provisions protecting the third parties rights for the duration of his interest. The statute and the implementing regulations do not distinguish, in protecting rights leading to the acquisition of title between those arising under Federal law and those arising under State law.

Valid Existing Rights Under the Alaska Native Claims Settlement Act, Sec. Order No. 3016 (Dec. 14, 1977) 85 I.D. 1

PRIMARY PLACE OF RESIDENCE

Criteria

In order to establish a primary place of residence there must be evidence that the applicant resided on the tract applied for as his primary place of residence on a regular or seasonal basis for a substantial period of time.

Appeal of Donald A. Watson, 2 ANCAB 289 (Feb. 2, 1978) 85 I.D. 27

REGIONAL CORPORATIONS

Lands available for selection by a Regional Corporation under sec. 12 of ANCSA are limited to those lands withdrawn pursuant to sec. 11 of ANCSA.

Sec. 17(d)(2)(E) of ANCSA is not intended to provide lands for selection by a Regional Corporation in addition to lands withdrawn for selection pursuant to sec. 11 of ANCSA. Sec. 17(d)(2)(E), rather, is intended to postpone the time within which the Regional

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

REGIONAL CORPORATIONS--Continued

Corporations may receive patent to any lands under dual withdrawal until Congress has first acted upon the same or has failed to act within the 5-year period mandated by sec. 17(d)(2)(D).

Appeal of Doyon, Ltd., 2 ANCAB 336 (Mar. 22, 1978)

SUMMARY DISMISSAL

An appeal will be summarily dismissed when, in response to a motion to show cause, the appellant states in writing it has no objection to the dismissal.

Appeal of Kodiak Island Borough, 3 ANCAB 108 (Dec. 18, 1978)

SURVEY

Procedures

The Bureau of Land Management was not in error in using survey procedures which varied from those specifically stated in the 1947 BLM Manual of Surveying Instructions when such procedures were utilized in order to avoid perpetuating an earlier surveying error into a new original township survey.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978) 85 I.D. 97

VILLAGE ELIGIBILITY

Generally

After expiration of the period in which a decision finding a village eligible may be appealed, and the village has been certified as eligible for benefits under sec. 11 of ANCSA, the Board has no jurisdiction over an appeal challenging the eligibility of the village and will dismiss such an appeal.

Appeal of Kodiak-Aleutian Chapter, Alaska Conservation Society, 2 ANCAB 363 (Mar. 31, 1978)

VILLAGE ENTITLEMENT

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation pursuant to sec. 14(a) of ANCSA.

U.S. Fish and Wildlife Service, 2 ANCAB 264 (Jan. 23, 1978)

Appeal of State of Alaska, 2 ANCAB 284 (Feb. 1, 1978)

The determination that a Village Corporation is eligible under sec. 11 of ANCSA is a finding that such village had at least a minimum Native population of 25 on the 1970 census enumeration date and thus entitles such village to at least the minimum acreage allocation of 69,120 acres of land pursuant to sec. 14(a) of ANCSA.

Appeal of Omar Stratman, et al., 2 ANCAB 329 (Mar. 23, 1978)

ALASKA NATIVE CLAIMS SETTLEMENT ACT (Dec. 18, 1971, 85 Stat. 688)--Continued

WITHDRAWALS AND RESERVATIONS

Generally

Segregation of lands covered by a withdrawal application filed by a military agency, accomplished by a notation of the land records, does not prevent statutory withdrawal of such lands for selection by a Native Corporation pursuant to sec. 11 of ANCSA.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V, 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

Cornering

Survey Offsets

A township, which is by legal description and in the prescribed plan of rectangular survey, located within a sec. 11(a)(1)(C) of ANCSA withdrawal, becomes excluded from such withdrawal when it fails to physically share a common corner with a township withdrawn under sec. 11(a)(1)(B) of ANCSA because BLM made an offset at that corner in order to cure a survey error.

Appeal of Tanacross, Inc., 2 ANCAB 379 (May 12, 1978) 85 I.D. 97

Federal Installations

The exception in sec. 3(e) of ANCSA for the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, can apply to lands which are not formally withdrawn for the agency using such lands and seeking to protect its use by invoking the exception.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

APPEALS

(See also Civil Rights, Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970--if included in this Index.)

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

Pancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

APPEALS--Continued

A private contest decision canceling a disputed homestead entry will, in the absence of a timely and proper appeal, cut off all rights which the contestee may have acquired by his entry, and this result will not be affected by the fact that the contestee failed to appear at the contest hearing and, through his own neglect, failed to receive notice of the decision of the administrative law judge.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (Jan. 5, 1978)

Under 43 CFR 4.401(a), a notice of appeal to the Board of Land Appeals may be considered even if not filed within the 30-day appeal period, where it is filed within 10 days of the deadline date and is transmitted within the appeal period.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 34 IBLA 283 (Apr. 17, 1978)

United States v. David F. Mangum and Donald D. DeGuerre, 35 IBLA 131 (May 22, 1978)

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a regulation of this Department.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

APPEALS--Continued

When an appeal is filed with the Board of Surface Mining and Reclamation Appeals from a decision made by the Office of Surface Mining Reclamation and Enforcement, that office loses jurisdiction and has no authority to take any action concerning it until that jurisdiction is restored by action of the Board that is dispositive of the appeal.

Apache Mining Co., 1 IBSMA 14 (July 13, 1978) 85 I.D. 395

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

Under 43 CFR 4.1 the existence of a Secretarial policy limits review by the Board of Land Appeals to the question of whether the action under review is consistent with that policy.

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does

APPEALS--Continued

not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error and the allegations in his statement of reasons are vague and unsupported.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not with some particularity show adequate reason for appeal and support the allegations with evidence showing error.

Valley Mobile Communications, Inc., 38 IBLA 359 (Dec. 29, 1978)

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

APPLICATIONS AND ENTRIES

GENERALLY

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference-right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Sec. 9(b) of the Administrative Procedure Act, as amended, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (West Supp. 1977), removed the Secretary of the Interior's discretion to grant extensions, applications for preference-right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978) 85 I.D. 396

Neither an application for an Alaska grazing lease nor an application for assignment of a grazing lease confer upon the applicant a right to a lease, the granting thereof being discretionary and subject to any changes in Secretarial policy.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

A. Johnson & Co., Inc., 38 IBLA 182 (Dec. 6, 1978)

A land selection application filed pursuant to secs. 12(b)(1), 12(b)(3), and 14(h)(1) of the Alaska Native Claims Settlement Act must conform to the regulations promulgated under the statute as enacted at the time the application is filed unless a later amendment to the statute provides otherwise.

Neither P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV, 1974)), nor the Terms & Conditions incorporated in the amendment, contain language which conflicts with, excludes, or preempts ANCSA regulations 43 CFR 2650.2(e)(1) and (2) requiring a legal description of lands applied for pursuant to ANCSA, or 43 CFR 2653.5(f) requiring a description and location of historical sites selected pursuant to sec. 14(h)(1) of ANCSA.

A land selection application filed pursuant to secs. 12(a)(1), 12(a)(3), and 14(h)(1) of ANCSA containing only a metes and bounds description of the exterior boundaries of a region, does not meet the requirements for a legal description of 43 CFR 2650.2(e)(1) and (2) and 2653.5(f).

A land selection determined finally to be invalid pursuant to ANCSA or its implementing regulations is not protected within the meaning of sec. 22(h)(1) after the date of terminations.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978) 85 I.D. 462

CANCELLATION

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

FILING

A decision by a Bureau of Land Management District Office rejecting an application for an extension of a mineral materials sale contract solely for the reason it was not timely filed in accordance with 43 CFR 3610.7 will be set aside and remanded for the authorized officer to determine whether the application may be considered as timely pursuant to 43 CFR 1821.2-2(g). This section permits the authorized officer to consider a document as being timely filed except where the law does not permit him to do so, the rights of a third party or parties have intervened, or the authorized officer determines that further consideration of the document would unduly interfere with the orderly conduct of business.

Don Kelland Materials, Inc., 35 IBLA 133 (May 22, 1978)

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

A. Johnson & Co., Inc., 38 IBLA 182 (Dec. 6, 1978)

PRIORITY

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

An over-the-counter oil and gas lease offer, properly rejected because of a failure to meet the requirements of the regulations, but which rejection did not become final because an appeal was timely filed, may be considered as having priority as of the date the defect was cured.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

VALID EXISTING RIGHTS

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978) 85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

Virgil V. Peterson and Hiko Bell Mining & Oil Co., 37 IBLA 18 (Sept. 12, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No

APPLICATIONS AND ENTRIES--Continued

VALID EXISTING RIGHTS--Continued

hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

VESTED RIGHTS

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

APPRAISALS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as

APPRAISALS--Continued

past permitted use. Also, interest may be imposed on increased charges due on an annual basis for the years prior to payment of such amount.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

ATTORNEYS

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gavanich, 36 IBLA 111 (July 14, 1978)

AUTHORITY TO BIND GOVERNMENT

Reliance upon erroneous information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law. The fact that a coal prospecting permittee alleges he was assured by BLM employees that he would receive permit extensions does not prevent the applicability of subsequent legislation which prohibits such extensions from causing his extension applications to be rejected.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

AVULSION

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

BUREAU OF INDIAN AFFAIRS
(See also Indian Probate--if included in this Index.)

GENERALLY

Appellant's pending court action does not present a bar to further agency review.

Administrative Appeal of Helen S. Kirschling v. Bureau of Indian Affairs, 7 IBIA 36 (Mar. 17, 1978)

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS

Generally

The party challenging the terms or conditions of a sale of Indian land bears the burden of proving the violation or misconduct alleged.

Administrative Appeal of Hazel Hawk Visser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 7 IBIA 22 (Feb. 17, 1978)

Determining the reasonableness of administrative fees assessed under authority of 25 CFR 141.18 is a matter requiring the exercise of discretionary authority and as such the issue must be directed to the Assistant Secretary for Indian Affairs for resolution.

The Board of Indian Appeals may not resolve a discretionary matter without clear authority from the Secretary.

Administrative Appeal of Helen S. Kirschling v. Bureau of Indian Affairs, 7 IBIA 36 (Mar. 17, 1978)

Acts of Agents of the United States

Limitation on Authority to Act

Contracts Express or Implied in Fact

The limitation that the United States is bound only by acts of agents which are within his authority applies not only to express contracts but to contracts implied in fact as well.

Administrative Appeal of Doyon, Ltd., 7 IBIA 83 (Aug. 8, 1978)

Notice of Limitation on Authority

Persons dealing with an agent of the United States are charged with notice of limitation on his authority and that the United States is bound only by acts of an agent which are within his authority.

Administrative Appeal of Doyon, Ltd., 7 IBIA 83 (Aug. 8, 1978)

Filing

Mandatory Time Limit

The appellant shall file his appeal with the Area Director or the Assistant Secretary (formerly Commissioner) for Indian Affairs within 30 days after filing of the notice of appeal in the office of the official who made the decision being appealed.

Benson-Montin-Greer Drilling Corp. v. Acting Area Director, Albuquerque Area Office, Bureau of Indian Affairs, 7 IBIA 67 (May 31, 1978)

BUREAU OF LAND MANAGEMENT
(See also Mineral Leasing Act--if included in this Index.)

Established and long-standing Departmental policy relating to the administration of the simultaneous oil and gas leasing system is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

BUREAU OF RECLAMATION

GENERALLY

The Federal reclamation laws are limited by their own terms to application in the 17 Western "reclamation states."

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

AUTHORIZATION

When Congress is relatively specific in authorizing a Government project, it takes egually specific Congressional action to change that authorization.

Certification that lands are irrigable is a separate and distinct process from authorizing a Bureau of Reclamation project and cannot be construed as authorization to serve lands in excess of those specifically authorized in the project act.

The agencies have the responsibility in cases where authority to act may be in guestion to bring the matter to the direct and specific attention of Congress and to reguest clarifying legislation.

Congressional ratification of a significant modification in an authorized project ordinarily cannot be gained through mere references in testimony or documents presented to Congress for appropriation purposes; the intent of Congress as a whole to ratify must be clearly expressed and manifested in the record.

Sec. 9(e) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(e) (1970), does not give the Secretary any independent authority for entering water service contracts for areas except as separately authorized by Congress.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

Where there is no clear Congressional authority to operate a Bureau of Reclamation project one way as opposed to another and there are proposed inconsistent methods of operation contained in the draft set of Operating Principles and feasibility report, it is the responsibility of the agency to seek additional and clarifying authority from Congress as to how the project is to be operated, particularly when important and controversial economic and environmental interests are involved.

Authority to Divert Flows from Hunter Creek Tributaries, Fryingpan-Arkansas Project, Colorado, M-36902 (July 31, 1978) 85 I.D. 326

The Secretary of the Interior has discretion to modify the physical features or plans of a Bureau of Reclamation project after Congressional authorization when the authorizing legislation only states what the general features of the project are to be and does not specifically incorporate any detailed feasibility report into

BUREAU OF RECLAMATION--Continued

AUTHORIZATION--Continued

the legislation. The Secretary cannot, however, deviate from the general plans or facilities specifically defined by Congress to be part of the project without obtaining the approval of Congress.

When Congress places a cost ceiling in legislation authorizing construction of a project, the agency must obtain additional authority from Congress to continue construction of the project if it is projected that the cost ceiling will be exceeded.

The Bureau of Reclamation is required to seek additional Congressional authority to continue a project at the earliest point in time that it determines the authorized cost ceiling will be exceeded so that Congress can determine whether the project should be completed at the increased cost.

Adequacy of Legislative Authorization for the San Felipe Division, Central Valley Project, California, M-36903 (July 31, 1978) 85 I.D. 337

CONSTRUCTION

Where there is no clear Congressional authority to operate a Bureau of Reclamation project one way as opposed to another and there are proposed inconsistent methods of operation contained in the draft set of Operating Principles and feasibility report, it is the responsibility of the agency to seek additional and clarifying authority from Congress as to how the project is to be operated, particularly when important and controversial economic and environmental interests are involved.

Authority to Divert Flows from Hunter Creek Tributaries, Fryingpan-Arkansas Project, Colorado, M-36902 (July 31, 1978) 85 I.D. 326

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The Bureau of Reclamation is required to seek additional Congressional authority to continue a project at the earliest point in time that it determines the authorized cost ceiling will be exceeded so that Congress can determine whether the project should be completed at the increased cost.

Adequacy of Legislative Authorization for the San Felipe Division, Central Valley Project, California, M-36903 (July 31, 1978) 85 I.D. 337

EXCESS LANDS

Congress intended to replace the excess land provisions of the general reclamation laws when it passed the SRPA by providing in sec. 5(c) thereof that excess landowners could receive Federally subsidized water on their excess holdings if they would repay with interest "a pro rata share of the loan which is attributable to furnishing irrigation benefits * * * to land held * * * in excess of 160 acres."

BUREAU OF RECLAMATION--Continued

EXCESS LANDS--Continued

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

FINDINGS OF FEASIBILITY

The Secretary of the Interior has discretion to modify the physical features or plans of a Bureau of Reclamation project after Congressional authorization when the authorizing legislation only states what the general features of the project are to be and does not specifically incorporate any detailed feasibility report into the legislation. The Secretary cannot, however, deviate from the general plans or facilities specifically defined by Congress to be part of the project without obtaining the approval of Congress.

Adequacy of Legislative Authorization for the San Felipe Division, Central Valley Project, California, M-36903 (July 31, 1978) 85 I.D. 337

OPERATION AND MAINTENANCE

Where there is no clear Congressional authority to operate a Bureau of Reclamation project one way as opposed to another and there are proposed inconsistent methods of operation contained in the draft set of Operating Principles and feasibility report, it is the responsibility of the agency to seek additional and clarifying authority from Congress as to how the project is to be operated, particularly when important and controversial economic and environmental interests are involved.

Authority to Divert Flows from Hunter Creek Tributaries, Fryingpan-Arkansas Project, Colorado, M-36902 (July 31, 1978) 85 I.D. 326

REPAYMENT AND WATER SERVICE CONTRACTS

A short-term or temporary contract will not rescind a long-term contract under the doctrine of superseding contracts unless the parties clearly intended that to be the effect of the new agreement and the terms of the new agreement are flatly inconsistent with the former agreement.

Sec. 9(e) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(e) (1970), does not give the Secretary any independent authority for entering water service contracts for areas except as separately authorized by Congress.

No water may be delivered to a reclamation district until the district has signed a repayment contract which establishes a sufficient repayment obligation guaranteeing that the United States will recover the costs of the project as provided by law.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

BUREAU OF RECLAMATION--Continued

RESIDENCY REQUIREMENTS

Even though Congress stated that the SRPA was to be a supplement to the reclamation law, SRPA's legislative history indicates that the Act was not intended to include the remainder of reclamation law, including the residency requirement.

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

SMALL PROJECTS PROGRAM

The Small Reclamation Projects Act (SRPA), 43 U.S.C. § 422a et seq. (1970), has two principal objectives: (1) to provide more direct involvement of non-Federal public agencies in water development, and (2) to simplify the authorization procedures for smaller projects.

The SRPA does not incorporate general reclamation law.

Congress intended to replace the excess land provisions of the general reclamation laws when it passed the SRPA by providing in sec. 5(c) thereof that excess landowners could receive Federally subsidized water on their excess holdings if they would repay with interest "a pro rata share of the loan which is attributable to furnishing irrigation benefits * * * to land held * * * in excess of 160 acres."

When those provisions of reclamation law which are specifically incorporated by SRPA are added to the provisions of SRPA itself, they form a complete scheme which is capable of standing by itself without need to incorporate the general body of reclamation law.

Even though Congress stated that the SRPA was to be a supplement to the reclamation law, SRPA's legislative history indicates that the Act was not intended to include the remainder of reclamation law, including the residency requirement.

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

COAL LEASES AND PERMITS

GENERALLY

Reliance upon erroneous information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law. The fact that a coal prospecting permittee alleges he was assured by BLM employees that he would receive permit extensions does not prevent the applicability of subsequent legislation which prohibits such extensions from causing his extension applications to be rejected.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978) 85 I.D. 161

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

Where a qualifying discovery of mineral has been made by a permittee during the term of a permit, a coal preference-right lease application need not be rejected because it was filed after the permit expired.

Even though the Bureau of Land Management from Jan. 26, 1972, to Aug. 19, 1977, considered preference-right coal lease applications in a pending status, it is not estopped to reject such applications as having been filed late because it has not been demonstrated that appellant relied on the Bureau's representations to appellant's detriment.

Thermal Energy Co., et al., 36 IBLA 334 (Aug. 28, 1978)

APPLICATIONS

An application for an extension of a prospecting permit under the Mineral Leasing Act is not a "valid existing right" within the meaning of the savings clause of sec. 4 of the Federal Coal Leasing Amendments Act of 1975, and is not, therefore, an interest which survives the amendment of the Mineral Leasing Act.

Peabody Coal Co., 34 IBLA 139 (Mar. 10, 1978)

Where an applicant for a preference-right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

The failure of an applicant for a preference-right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference-right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

Applications for short-term coal leases may be accepted only where it is shown that such coal is needed to maintain an existing operation or that such coal is needed as a reserve for production in the near future under the provisions of 43 CFR 3525.3-1.

Shell Oil Co., 35 IBLA 195 (May 23, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

A decision rejecting an application for modification of a coal lease will be affirmed where the additional acreage requested exceeds the limit imposed by the Federal Coal Leasing Amendments Act of 1975 notwithstanding the fact that the application was filed prior to enactment of the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

Where a coal prospecting permittee demonstrates that lands described in its permit contain coal in commercial quantities, the permittee is entitled to consideration of a lease to such lands and its request that its coal preference-right lease application be restored to its status as a pending preference-right lease application may be honored.

Thermal Energy Co., et al., 36 IBLA 334 (Aug. 28, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

Virgil V. Peterson and Hiko Bell Mining & Oil Co., 37 IBLA 18 (Sept. 12, 1978)

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Sec. 9(b) of the Administrative Procedure Act, as amended, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (West Supp. 1977), removed the Secretary of the Interior's discretion to grant extensions, applications for preference-right leases filed after expiration of the initial 2-year permit term, and

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

CANCELLATION

Where an applicant for a preference-right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

The failure of an applicant for a preference-right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference-right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

LEASES

The Secretary of the Interior has authority to reject a request to modify a coal lease by adding 160 acres to it where the record discloses a rational basis for the conclusion that the acreage sought is capable of being developed as part of an independent operation.

The Geological Survey is the Secretary's technical expert in matters concerning coal permits and leases and the Secretary is entitled to rely on its reasoned analysis.

Where a request to modify a coal lease by adding acreage to it is rejected by the BLM solely on the basis of conclusory statement of the Geological Survey that the area applied for is capable of being developed as part of an independent operation and the factual basis for that conclusion does not appear in the record, the decision will be set aside and the case remanded for the compilation of a more complete record and readjudication of the request.

Intermountain Exploration Co., 35 IBLA 15 (May 4, 1978)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

A decision rejecting an application for modification of a coal lease will be affirmed where the additional acreage requested exceeds the limit imposed by the Federal Coal Leasing Amendments Act of 1975 notwithstanding the fact that the application was filed prior to enactment of the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

Where a coal prospecting permittee demonstrates that lands described in its permit contain coal in commercial quantities, the permittee is entitled to consideration of a lease to such lands and its request that its coal preference-right lease application be restored to its status as a pending preference-right lease application may be honored.

Thermal Energy Co., et al., 36 IBLA 334 (Aug. 28, 1978)

PERMITS

Generally

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference-right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removes the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

Virgil V. Peterson and Hiko Bell Mining & Oil Co., 37 IBLA 18 (Sept. 12, 1978)

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

Generally--Continued

A delay in taking action on an application for extension of a coal prospecting permit while the Secretary formulates a new leasing policy does not violate the Administrative Procedure Act, 5 U.S.C. § 555(b) (1976), nor does it constitute an abuse of discretion which would create any rights not authorized by law. No hearing is required when the facts of a case are not in dispute and the only issues are questions of law.

Sec. 9(b) of the Administrative Procedure Act, as amended, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (West Supp. 1977), removed the Secretary of the Interior's discretion to grant extensions, applications for preference-right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

COLOR OR CLAIM OF TITLE

GENERALLY

A claim is not held in peaceful adverse possession where occupancy under color of title was initiated after land has been withdrawn or reserved for Federal purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

The Color of Title Act, 43 U.S.C. § 1068 (1976), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

The possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that Act. Color or claim of title must be based upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant.

The obligation for proving a valid color of title claim is upon the claimant.

Frank W. Sharp, 35 IBLA 257 (May 31, 1978)

A claim or color of title must be based upon a document which on its face purports to convey the land applied for to the applicant or her predecessors.

A class 1 color of title claim requires good faith, peaceful possession by a claimant, her ancestors or grantors, under claim or color of title for more than 20 years.

A color of title application for land which is not described in deeds in the chain of title must be rejected even though the applicant and her predecessors believed the land was covered by the deeds. The burden of proving a valid color of title claim is on the claimant.

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

A color of title application for land which has been withdrawn prior to any conveyance in applicant's chain of title is properly rejected.

Marie Lombardo, 37 IBLA 247 (Oct. 18, 1978)

Where record does not show any instrument purporting on its face to convey the disputed land not later than Jan. 1, 1901, appellant has not made out a meritorious class 2 color of title claim.

A grantor's quitclaim deed may be, if other requirements are met, sufficient to invest a grantee with color of title to the lands purportedly conveyed.

Instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained.

Extrinsic evidence may be introduced in color of title proceeding to make definite a description in a deed which is latently ambiguous as to what lands were conveyed.

Mary C. Pemberton, 38 IBLA 118 (Nov. 22, 1978)

APPLICATIONS

A color of title application for land which is not described in deeds in the chain of title must be rejected even though the applicant and her predecessors believed the land was covered by the deeds. The burden of proving a valid color of title claim is on the claimant.

Marie Lombardo, 37 IBLA 247 (Oct. 18, 1978)

DESCRIPTION OF LAND

Instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained.

Extrinsic evidence may be introduced in color of title proceeding to make definite a description in a deed which is latently ambiguous as to what lands were conveyed.

Mary C. Pemberton, 38 IBLA 118 (Nov. 22, 1978)

GOOD FAITH

A color of title applicant lacks the required good faith if he knew when he acquired the land that title was in the United States. If the title defect was not known at the time of acquisition, the good faith must be established for the 20-year period prior to its discovery. If the applicant has not held the land for 20 years, he may tack on the possession of his predecessors in interest, provided they possessed the land in good faith. If any predecessor knew of the title defect, the 20-year period must be established after he divested his interest to someone in the chain of title who did not know of the defect and thus possessed the land in good faith.

George E. Merrick, Alice J. Merrick, 35 IBLA 208 (May 26, 1978)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

A grantor's quitclaim deed may be, if other requirements are met, sufficient to invest a grantee with color of title to the lands purportedly conveyed.

Instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained.

Extrinsic evidence may be introduced in color of title proceeding to make definite a description in a deed which is latently ambiguous as to what lands were conveyed.

Mary C. Pemberton, 38 IBLA 118 (Nov. 22, 1978)

COMMUNICATION SITES

A communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to the periodic reappraisal under the terms of the specific grant and applicable regulations then in effect, 43 CFR 244.21(b) and (f) (1954).

Second party utilization of a communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to BLM authorization under the governing regulation, 43 CFR 244.18(a) (1954).

James W. Smith, 34 IBLA 146 (Mar. 10, 1978)

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than

COMMUNICATION SITES--Continued

$100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Where there are multiple users on the same communications site each user is individually responsible for the fair market rental value computed as of the time of the initiation of use, and such rental value determined for the site may not be prorated among different users.

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decision-maker, that the decision-maker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

CONSTITUTIONAL LAW

GENERALLY

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The seventh amendment right to a jury trial does not extend to administrative proceedings, such as mining claim contests, where statutory rights adjudicated therein were unknown at common law.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

CONSTITUTIONAL LAW--Continued

DUE PROCESS

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

In an administrative hearing to determine the validity of a mining claim, the requirements of due process are satisfied when notice and opportunity for an impartial hearing are provided in accordance with the Administrative Procedure Act. 5 U.S.C. § 551 et seq. (1976).

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

CONTESTS AND PROTESTS
(See also Rules of Practice--if included in this Index.)

GENERALLY

In a Government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts included in the record, regular on their face and indicating proper service.

United States v. Bonda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

A private contest complaint which does not set out in clear and concise language a statement of the facts constituting the grounds of contest is properly dismissed.

Eugene A. Whitmill, 34 IBLA 123 (Mar. 2, 1978)

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest,

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

United States v. Brent J. Brunker, 36 IBLA 36 (June 27, 1978)

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

The Department of the Interior is lawfully empowered to initiate a contest pursuant to the Administrative Procedure Act to determine the validity of unpatented mining claims. This procedure makes no provision for 1) trial by jury, 2) advice to the contestant concerning his constitutional rights, 3) compensation to the contestant for the value of the claim if it is found to be invalid, or 4) appointment by the Department of qualified counsel to represent the contestant; and this procedure does not violate constitutional guarantees of due process, the General Mining Law, or the Administrative Procedure Act. Presentation of the contestant's case by counsel employed by the Forest Service in appropriate cases is permissible, and Federal employees may testify as witnesses, and may conduct examinations and secure mineral samples on unpatented mining claims without a search warrant.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

The seventh amendment right to a jury trial does not extend to administrative proceedings, such as mining claim contests, where statutory rights adjudicated therein were unknown at common law.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

CONTRACTS
(See also Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

GENERALLY

In the construction or interpretation of contracts, the primary purpose and guideline is the intention of the parties. A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument. Individual words and phrases must be considered in connection with the rest of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and grants appellant a rental-free revocable permit to enter the "service location," for any purpose under the contract including use of the sites for installation, operation, and maintenance of the facilities, the contract can be interpreted as granting appellant a rental-free revocable permit for a right-of-way for a gas pipeline.

In construing an ambiguous contract, the conduct of the parties in relation to such contract is to be considered in determining the meaning of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and the appellant constructs a pipeline pursuant to the contract, it is reasonable to interpret the contract as providing a revocable permit for a right-of-way for such pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

CONSTRUCTION AND OPERATION

Generally

A short-term or temporary contract will not rescind a long-term contract under the doctrine of superseding contracts unless the parties clearly intended that to be the effect of the new agreement and the terms of the new agreement are flatly inconsistent with the former agreement.

Laws in existence at the time a contract is entered into become a part of the contract whether or not expressly referred to in the contract or incorporated in its terms.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties

A second category differing site condition based on excessive rock drilling and inaccessability of the work site for construction of a fence is denied where the Board finds that there was an inadequate pre-bid site investigation and that an adequate investigation would have disclosed the actual conditions encountered.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

In construing an ambiguous contract, the conduct of the parties in relation to such contract is to be considered in determining the meaning of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and the appellant constructs a pipeline pursuant to the contract, it is reasonable to interpret the contract as providing a revocable permit for a right-of-way for such pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Allowable Costs

Where the Government contracts with a small corporation to obtain the services of a recognized expert in fish biology and where the sum of an approximate yearly salary of $44,000 plus approximately $4,000 of fringe benefits and approximately $8,000 of life insurance premiums are compensation to the expert for a total approximate yearly compensation or corporate cost of $56,000 and where the specific contract is for approximately $1 million said compensation and costs are reasonable allowable costs under the contract.

"Fringe costs," leave, life insurance premiums, retirement plan costs, life raft for safety, are all allowable costs in the circumstances in this appeal.

Fees and expenses in the preparation and conduct of an appeal are disallowed costs of prosecution of claims against the Government.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Feb. 16, 1978) 85 I.D. 41

Where a cost-plus-fixed-fee contract contains specified ceilings on reimbursement for general and administrative expenses and rates for certain consultants, such ceilings are found to apply to the entire contract, including a second phase initiated by the timely exercise of an option in the contract.

Costs reimbursable to a contractor under a cost-plus-fixed-fee contractor are found to exclude those portions of an executive's salary properly chargeable to work outside the scope of the contract, but the costs of low-cost cameras and recorders necessary to performance are allowed as materials and supplies because the conditions under which they were used made them expendable material.

Appeal of Environmental Associates, Inc., IBCA-1128-10-76 (Aug. 15, 1978) 85 I.D. 349

Where a finding is made by the Board on the extent of the Government's liability to the contractor, any moneys previously allowed and paid pursuant to a contracting officer's decision on the same claims shall

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

be deducted from the gross amount allowed in order to determine the net amount payable to the contractor.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Changed Conditions (Differing Site Conditions)

While the wind at the work site was severe, the Board found that no changed condition had been shown.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Changes and Extras

Where the contract required the construction of a fence on the boundary of a national monument and the appellant disregarded IFB instructions to visit the monument headquarters for information pertinent to bidding and disregarded other specific requirements of the specifications regarding the permissible methods of transporting materials to the work site, claims for increased costs of performance are denied because the costs resulted from appellant's failure to make an adequate pre-bid site investigation and to plan to perform in accordance with the specification requirements.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

When the Government erroneously places stakes to locate the worksite--a road--it is liable for extra costs caused thereby.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Where the Government contracts for the surfacing of a road on an existing subgrade without knowledge of the actual condition of the subgrade and without disclosing that the subgrade was constructed of unknown soils without regard to any specification or testing standard and such subgrade breaks up under the normal traffic of the surfacing contractor's construction equipment, the omission of the Government to specify the actual condition of the subgrade is held to constitute a defect in the specifications, entitling the contractor to an equitable adjustment for the extra work occasioned by the defective specifications.

Buck Brown Contracting Co., Inc., IBCA-1119-7-76 (Aug. 1, 1978)

The contractor's claim that the Government's use of the word "subgrade" in the earthwork specifications created an ambiguity which should be construed against the drafter was denied. The "contra proferentem" rule is not applicable in this instance because the definition propounded by the contractor was not reasonable, use of the word in the specified context did not create an ambiguity, the contractor did not register an objection when informed of the Government's interpretation, and no evidence was presented to show that the contractor relied on its alleged interpretation at the time of bidding.

Where the Government's engineer recorded in his daily diary a verbal protest made by the contractor about embankment compaction difficulties and the inaccuracy of the proctor information furnished by the Government,

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

this satisfied the 20-day notice requirement of the changes clause with respect to some of the claims. It was unnecessary to finally decide the scope of such notice, however, where the Board found the claims to be without merit in any event.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Where a contract does not specify the exact method to be used by the contractor in performing manhole renovations, the contractor may proceed according to the industry standard. The Board finds that sandblasting was an acceptable and adequate method to renovate manholes and that the Government's requirement to use a more costly method was unwarranted.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Construction Against Drafter

The contractor's claim that the Government's use of the word "subgrade" in the earthwork specifications created an ambiguity which should be construed against the drafter was denied. The "contra proferentem" rule is not applicable in this instance because the definition propounded by the contractor was not reasonable, use of the word in the specified context did not create an ambiguity, the contractor did not register an objection when informed of the Government's interpretation, and no evidence was presented to show that the contractor relied on its alleged interpretation at the time of bidding.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Contract Clauses

Payment was not allowed under a general erosion control clause when there was no order by the COAR citing that clause to replace roadbed blown away by severe winds.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Where a contractor accepted a contract containing a clause limiting an equitable adjustment for profit to 15 percent of the cost of changed work, he is bound by the limitation even though his contract price of $1.31 per cubic yard of sand exceeded his estimated contract costs of 75 cents per cubic yard by more than 15 percent.

Where the Board finds an interest clause to be incorporated into a contract by operation of law and the clause requires the contracting officer to make certain findings thereunder but the contractor's claim for interest has been presented only to the Board and not to the contracting officer, the Board remands the claim for interest to the contracting officer for a determination of the interest due in accordance with the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (July 6, 1978) 85 I.D. 242

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

The contractor's claim that the Government's use of the word "subgrade" in the earthwork specifications created an ambiguity which should be construed against the drafter was denied. The "contra proferentem" rule is not applicable in this instance because the definition propounded by the contractor was not reasonable, use of the word in the specified context did not create an ambiguity, the contractor did not register an objection when informed of the Government's interpretation, and no evidence was presented to show that the contractor relied on its alleged interpretation at the time of bidding.

Where the contracting officer by contract was given discretion in setting the moisture requirement for high volume change soils, the contractor's claim of extra compaction work due to rigid moisture requirements was denied because the contractor failed to show that the contracting officer abused his discretion or that the discretion exercised caused the contractor extra contract costs.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Contracting Officer

Where the Board finds an interest clause to be incorporated into a contract by operation of law and the clause requires the contracting officer to make certain findings thereunder but the contractor's claim for interest has been presented only to the Board and not to the contracting officer, the Board remands the claim for interest to the contracting officer for a determination of the interest due in accordance with the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (July 6, 1978) 85 I.D. 242

Where the contracting officer by contract was given discretion in setting the moisture requirement for high volume change soils, the contractor's claim of extra compaction work due to rigid moisture requirements was denied because the contractor failed to show that the contracting officer abused his discretion or that the discretion exercised caused the contractor extra contract costs.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Differing Site Conditions (Changed Conditions)

A second category differing site condition based on excessive rock drilling and inaccessability of the work site for construction of a fence is denied where the Board finds that there was an inadequate pre-bid site investigation and that an adequate investigation would have disclosed the actual conditions encountered.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

A first category differing site condition under a well drilling contract is found where the contract indications of subsurface conditions did not reveal an extensive alluvial deposit strewn with boulders, and

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

the subsurface conditions could not be determined by a prebid site investigation.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Sept. 26, 1978) 85 I.D. 384

Where the prime contractor claims damages against the Government stemming from differing site conditions encountered by its subcontractor, and the prime contractor and subcontractor have settled these same claims in an independent proceeding, the Government's liability to the prime contractor is limited to the amount of the settlement.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Drawings and Specifications

When the specifications state that either of two types of cement mixers may be used and the use of one results in unexpected and unusual movement of the subbase which weakens the specified cement base, the Board finds that the specifications and design are defective.

A drawing in the bid package, which showed the concrete road base extending right to the edge of the underlying corner of the builtup supporting subbase, was found to be defective and misleading when during construction it was found that the upper corners of the sandy subbase would not support the road grading equipment needed and used to grade the concrete shoulders of the road, with the result that the subbase shoulders gave way and the road grading equipment slipped off the embankment. The appellant was entitled to the reasonable added costs of building wider subbase shoulders to remedy the omission from the drawing.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978). 85 I.D. 107

Where evidence established that cause of failure of cantilever lintel and collapse of masonry wall was improper original shoring, as well as noncompliance with appropriate directions in reshoring process, on part of construction contractor's employees, and where evidence further showed that drawings and specifications were followed in construction of similar lintels on same project with successful result, the Board finds such drawings and specifications to be neither defective nor inadequate.

Appeal of CSH Contractors, Inc., IBCA-1107-4-76 (May 25, 1978) 85 I.D. 146

The Board finds contract specifications to be defective where an elevation shown on the drawings fails to coincide with the actual elevation at the site causing extra work and additional costs with respect to the installation of riprap.

G.T.S. Co., Inc., IBCA-1077-9-75 (Sept. 15, 1978) 85 I.D. 373

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

When the Government issues a contract which, unknown to the contractor, is defective because insufficient borrow is available from the designated borrow sites, and thereafter the Government issues three de facto change orders, at three different times, to make sufficient borrow available, and where the record discloses that the Government failed to reveal preaward knowledge that haul or overhaul would be required and that it had decided to substantially alter a borrow depth limit on the drawings, the Government is liable under the changes clause for the additional costs shown to be attributable to the Government's actions.

A dispute as to pay quantities under a construction contract is resolved in favor of the contractor where his interpretation of the specification paragraph in issue gives effect to all the language of the particular provision and is consistent with the construction placed upon the specifications and drawings by the Government employees responsible for their preparation. A Government's counterclaim involving a portion of the disputed pay quantities is denied.

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change it is not possible to determine precisely the extent to which the Government's actions increased the cost of performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board finding whether particular costs are allowable where that is possible and drawing inferences from the entire record where it is not possible to otherwise determine the proper allowances to be made for various aspects of the claimed amount.

Claims for extra costs incurred in the concrete lining of a canal attributed to heat encountered during delayed performance allegedly caused by defective plans and specifications is denied, where the Board finds that the delays experienced were the result of actions or inactions for which the contractor was responsible including (i) the failure to have necessary equipment operational weeks after concrete placement was to commence according to the contractor's plan; (ii) the hiring of incompetent carpenters; and (iii) the manner in which the contractor chose to place outlet structures.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

Estimated Quantities

Where the bid package drawings listed estimated quantities and the general and special conditions indicated payment would be made for actual quantities used but the pay item was "per station," the contractor was entitled to payment in actual quantities placed at the unit price per cubic yard established in a unilateral change order issued to recompense the contractor for amounts placed in excess of those shown in the bid package.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

General Rules of Construction

Where the contract required the construction of a fence on the boundary of a national monument and the appellant disregarded IFB instructions to visit the monument headquarters for information pertinent to bidding and disregarded other specific requirements of the specifications regarding the permissible methods of transporting materials to the work site, claims

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

for increased costs of performance are denied because the costs resulted from appellant's failure to make an adequate pre-bid site investigation and to plan to perform in accordance with the specification requirements.

Appeal of Arizona Fence Co., Inc., IBCA-1144-3-77 (Feb. 9, 1978)

Where a contract does not specify the exact method to be used by the contractor in performing manhole renovations, the contractor may proceed according to the industry standard. The Board finds that sandblasting was an acceptable and adequate method to renovate manholes and that the Government's requirement to use a more costly method was unwarranted.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

A dispute as to pay quantities under a construction contract is resolved in favor of the contractor where his interpretation of the specification paragraph in issue gives effect to all the language of the particular provision and is consistent with the construction placed upon the specifications and drawings by the Government employees responsible for their preparation. A Government's counterclaim involving a portion of the disputed pay quantities is denied.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

Intent of Parties

In the construction or interpretation of contracts, the primary purpose and guideline is the intention of the parties. A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument. Individual words and phrases must be considered in connection with the rest of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and grants appellant a rental-free revocable permit to enter the "service location," for any purpose under the contract including use of the sites for installation, operation, and maintenance of the facilities, the contract can be interpreted as granting appellant a rental-free revocable permit for a right-of-way for a gas pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Notices

Under a cost-plus-fixed-fee contract, a cost overrun is allowed where the Government's refusal to fund the overrun was based on appellant's failure to give timely notice under the Limitation of Cost clause and a subsequent audit report finds that the appellant was not aware of a 22 percent increase in the actual overhead rate until a post-performance audit was completed in accordance with the appellant's approved accounting practices.

Appeal of California Earth Sciences Corp., IBCA-1138-12-76 (Mar. 3, 1978) 85 I.D. 75

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

Where the Government's engineer recorded in his daily diary a verbal protest made by the contractor about embankment compaction difficulties and the inaccuracy of the proctor information furnished by the Government, this satisfied the 20-day notice requirement of the changes clause with respect to some of the claims. It was unnecessary to finally decide the scope of such notice, however, where the Board found the claims to be without merit in any event.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Privity of Contract

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

Third Persons

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Waiver and Estoppel

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

The United States is not bound or estopped by the acts of its agents who may enter into a contract or an agreement to do or cause to be done what the law does not sanction or permit.

The burden is on the individual or entity contracting with the Government to ascertain whether the Government agent with whom he is dealing is acting within the scope of his authority.

Estoppel has been imposed against the Government by the Ninth Circuit Court of Appeals only if it can be shown that there was "affirmative misconduct" by the Government.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

DISPUTES AND REMEDIES

Appeals

One element of an appeal was denied as the sanction for the appellant's failure to answer certain interrogatories relating to that element.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

Burden of Proof

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

When the Government says that a claim is barred by a supplemental agreement it has the burden of proof as to the terms and conditions of that agreement.

Appeal of Sierra Construction Co., IBCA-1145-3-77 (June 7, 1978) 85 I.D. 192

Where the contract specifies a particular test procedure to be used by the Government for compliance testing, and the contractor alleges improper test procedures by the Government, contractor has the burden of proving that the test procedures actually used by the Government were contrary to those specified, and that it incurred extra costs as a result thereof. Contractor failed to sustain its burden of proof, except with respect to the snperspan claim.

Contractor's claims for extra costs allegedly incurred as a result of constructive changes under the earthwork requirements of the contract were denied because the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

contractor failed to sustain its burden of proof on the merits.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

In claiming extra costs due to a Government-caused delay, the burden is on the contractor to show that a delay occurred, that the delay was caused by the Government, and that damages incurred as a result of the delay. Absent this proof, the Board found appellant's delay claim to be totally without merit.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Damages

Liquidated Damages

When the Government assesses liquidated damages for late performance of a contract and the contractor asserts that the delay was excusable because of unusnally severe weather, the contractor must show not only that the weather was bad (and delayed the work), but that the weather was worse than normal for that time and place.

Appeal of Sierra Construction Co., IBCA-1145-3-77 (June 7, 1978) 85 I.D. 192

Measurement

Where the prime contractor claims damages against the Government stemming from differing site conditions encountered by its subcontractor, and the prime contractor and subcontractor have settled these same claims in an independent proceeding, the Government's liability to the prime contractor is limited to the amount of the settlement.

Where a finding is made by the Board on the extent of the Government's liability to the contractor, any moneys previonsly allowed and paid pursnant to a contracting officer's decision on the same claims shall be deducted from the gross amount allowed in order to determine the net amount payable to the contractor.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Equitable Adjnstments

Where evidence established that faulty construction of original shoring and noncompliance with appropriate directives in reshoring process on the part of construction contractor's own employees caused failnre of cantilever lintel and collapse of masonry wall, the Board denies claim of entitlement to an equitable adjnstment by the contractor for additional costs incurred in reconstruction of masonry wall as well as claim for 30-day time extension, since the contractor failed to prove allegations of defective or inadequate Government drawings and specifications.

Appeal of CSH Contractors, Inc., IBCA-1107-4-76 (May 25, 1978) 85 I.D. 146

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

In a contract for placement of sand on a beach at Cape Hatteras where the contracting officer's formula for computing an equitable adjustment for changed work did not consider the increased pumping time and increased maintenance caused by the change and did not allow for profit on the increased costs, the Board found that the contractor was entitled to an equitable adjustment based on those factors.

Where a contractor accepted a contract containing a clause limiting an equitable adjustment for profit to 15 percent of the cost of changed work, he is bound by the limitation even though his contract price of $1.31 per cubic yard of sand exceeded his estimated contract costs of 75 cents per cubic yard by more than 15 percent.

Appeal of J. A. LaPorte, Inc., IBCA-1146-3-77 (July 6, 1978) 85 I.D. 242

Under a contract for surfacing a road over an existing subgrade which proves to require extensive rebuilding because of the failure of the contract to specify the actual conditions, the equitable adjustment to which the contractor is entitled is found to be the amount by which the actual costs and profit rate bid exceeds the final contract value, rather than the speculative costs attributed to interruptions and delays, because the contractor's performance period was not significantly extended.

Buck Brown Contracting Co., Inc., IBCA-1119-7-76 (Aug. 1, 1978)

Appellant is entitled to an equitable adjustment of the contract price for costs incurred as a result of the changes under the superspan specifications. Since the contractor was unable to establish the amount of its damages by reliable evidence, the total cost approach of pricing the contract adjustment was rejected. The total cost approach is disfavored as a measure of compensation because it assumes that the original bid was accurate, that the change was the sole cause of cost increases, and that the cost incurred was reasonable. The jury verdict approach was used since mathematical exactness is not necessary and there existed some evidence which was deemed sufficient for that purpose. The Board also found the contractor had been excusably delayed by actions attributable to the Government.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Where the contractor alleged extra costs but failed to establish that all such costs were due to the defective specifications, and where a Government audit shows that a substantial portion of such costs were in fact incurred but could not attribute such costs to that portion of the project relating to the defective specification, the Board will determine the amount of the equitable adjustment by utilizing the jury verdict approach.

G.T.S. Co., Inc., IBCA-1077-9-75 (Sept. 15, 1978) 85 I.D. 373

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

Where a finding is made by the Board on the extent of the Government's liability to the contractor, any moneys previously allowed and paid pursuant to a contracting officer's decision on the same claims shall be deducted from the gross amount allowed in order to determine the net amount payable to the contractor.

Appeal of Paul E. McCollum, Sr., IBCA-1123-8-76 (Nov. 22, 1978)

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change it is not possible to determine precisely the extent to which the Government's actions increased the cost of performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board finding whether particular costs are allowable where that is possible and drawing inferences from the entire record where it is not possible to otherwise determine the proper allowances to be made for various aspects of the claimed amount.

Claims for extra costs incurred in the concrete lining of a canal attributed to heat encountered during delayed performance allegedly caused by defective plans and specifications is denied, where the Board finds that the delays experienced were the result of actions or inactions for which the contractor was responsible including (i) the failure to have necessary equipment operational weeks after concrete placement was to commence according to the contractor's plan; (ii) the hiring of incompetent carpenters; and (iii) the manner in which the contractor chose to place outlet structures.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

Jurisdiction

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default

Generally

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

FORMATION AND VALIDITY

Generally

An internal decision memorandum signed by the Secretary of the Interior which recommends a contract negotiating position cannot ripen into a binding contract with an entity who has relied and acted upon some position recommended in the memorandum.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

Bid Award

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

Cost-type Contracts

Under a cost-plus-fixed-fee contract, a cost overrun is allowed where the Government's refusal to fund the overrun was based on appellant's failure to give timely notice under the Limitation of Cost clause and a subsequent audit report finds that the appellant was not aware of a 22 percent increase in the actual overhead rate until a post-performance audit was completed in accordance with the appellant's approved accounting practices.

Appeal of California Earth Sciences Corp., IBCA-1138-12-76 (Mar. 3, 1978) 85 I.D. 75

A Government motion for reconsideration is denied where the Board finds that a cost estimate (cost and pricing data) was not a firm offer to perform the work within the hours and at the prices or rates specified, but was rather simply the initial basis for negotiating a cost-plus-fixed-fee contract.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Apr. 14, 1978) 85 I.D. 167

Negotiated Contracts

When the Government issues a RFP to a sole source and the sole source submits three different proposals at different times and the Government issues a second and somewhat different solicitation and finally the Government and the sole source sign another document which is somewhat different from all prior solicitations and proposals and is complete in itself, that document is

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Negotiated Contracts--Continued

the contract and supersedes all prior solicitations and proposals.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Feb. 16, 1978) 85 I.D. 41

Mere negotiations for a new contract do not imply rescission of an existing contract.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

PERFORMANCE OR DEFAULT

Breach

Where the Government obligates substantial funds to buy equipment and services but allows an option to extend the lease for computers that are essential for full performance of the contract to lapse and then fails to obligate funds to buy or lease these computers, the Government has prevented performance of the critical part of the contract and the contractor is justified in stopping work.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

Excusable Delays

Where the Government obligates substantial funds to buy equipment and services but allows an option to extend the lease for computers that are essential for full performance of the contract to lapse and then fails to obligate funds to buy or lease these computers, the Government has prevented performance of the critical part of the contract and the contractor is justified in stopping work.

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

Impossibility of Performance

Where the Government obligates substantial funds to buy equipment and services but allows an option to extend the lease for computers that are essential for full performance of the contract to lapse and then fails to obligate funds to buy or lease these computers, the Government has prevented performance of the critical

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Impossibility of Performance--Continued

part of the contract and the contractor is justified in stopping work.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

A claim that performance of a well drilling contract is impossible is denied where the evidence shows only that the contractor has been unable to penetrate beyond 38 feet using two different drilling rigs and there is no evidence to show that no known drilling methods or equipment could enable the construction of a vertically aligned well at the required depth.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Sept. 26, 1978) 85 I.D. 384

When the Government issues a contract which, unknown to the contractor, is defective because insufficient borrow is available from the designated borrow sites, and thereafter the Government issues three de facto change orders, at three different times, to make sufficient borrow available, and where the record discloses that the Government failed to reveal preaward knowledge that haul or overhaul would be required and that it had decided to substantially alter a borrow depth limit on the drawings, the Government is liable under the changes clause for the additional costs shown to be attributable to the Government's actions.

A&J Construction Co., Inc., IBCA-1142-2-77 (Dec. 28, 1978) 85 I.D. 468

Inspection

Where the contract specifies a particular test procedure to be used by the Government for compliance testing, and the contractor alleges improper test procedures by the Government, contractor has the burden of proving that the test procedures actually used by the Government were contrary to those specified, and that it incurred extra costs as a result thereof. Contractor failed to sustain its burden of proof, except with respect to the superspan claim.

Burn Construction Co., IBCA-1042-9-74 (Aug. 30, 1978) 85 I.D. 353

Waiver and Estoppel

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

CONVEYANCES

GENERALLY

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there

CONVEYANCES--Continued

GENERALLY--Continued

is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

COURTS

A consent decree obtained by the Securities and Exchange Commission establishes no precedent for cases involving different parties. Allegations of Federal securities law violations in connection with Federal oil and gas leasing should be directed to the Securities and Exchange Commission, the agency with jurisdiction over such matters. The jurisdiction of the Board of Land Appeals does not extend to matters exclusively under the jurisdiction of the SEC, but goes to matters involving compliance with oil and gas leasing statutes and regulations.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal Securities Law violations should be directed to the SEC rather than to the Board of Land Appeals.

William Miller, 36 IBLA 349 (Aug. 28, 1978)

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

DESERT LAND ENTRY

GENERALLY

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical, and geological values in public lands along the North Platte River.

Objections raised on appeal to the Interior Board of Land Appeals to the merits of withdrawal of public lands in order to protect recreational, historical, and geological values in public lands along the North Platte River, will not vitiate its effect as a bar to the availability of the lands under the desert land laws, as it is not within the Board's function or authority to take the steps necessary to revoke the withdrawal, restore the lands to the operation of the

DESERT LAND ENTRY--Continued

GENERALLY--Continued

public land laws, and classify it as suitable for disposition as a desert land entry.

Cecilia J. Cuin, 36 IBLA 250 (Aug. 15, 1978)

APPLICATIONS

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical, and geological values in public lands along the North Platte River.

Cecilia J. Cuin, 36 IBLA 250 (Aug. 15, 1978)

CANCELLATION

Where the deadline for making final proof of compliance on a desert land entry passes without the entryman having made final proof, his entry is properly canceled, even though a request for an additional extension of time within which to file such final proof was pending on the deadline date, where the request for extension is subsequently denied.

Thomas D. Hickey, 34 IBLA 86 (Feb. 22, 1978)

EXTENSION OF TIME

Where a desert land entryman admits that there were alternate measures which might have been taken to achieve compliance by the deadline date therefor, as extended, but which he failed to employ, BLM's determination that resulting delays were not beyond his control, and that accordingly he is not entitled under 43 CFR 2522.5 to a third extension of time within which to make final proof, will not be disturbed. Inadequacy of financial resources to take available alternative steps does not excuse his failure to comply.

A third extension of time to file final proof of compliance on a desert land entry is properly denied to an entryman who acknowledges that he failed to make full use of previous extensions.

Where the deadline for making final proof of compliance on a desert land entry passes without the entryman having made final proof, his entry is properly canceled, even though a request for an additional extension of time within which to file such final proof was pending on the deadline date, where the request for extension is subsequently denied.

Where the entryman makes admissions and submits evidence which establish conclusively that his failure to "prove up" his desert land entry during its initial term and two extensions was not the result of unavoidable delay, and that the failure was not without fault on his part, no further administrative proceedings are required prior to rejecting his application for a third extension.

Thomas D. Hickey, 34 IBLA 86 (Feb. 22, 1978)

ENDANGERED SPECIES ACT OF 1973

SECTION 7

Consultation

Sec. 7 of the Endangered Species Act and the Secretary's regulations require consideration of not only the impacts of the particular activity subject to consultation, but also the cumulative effects of other activities or programs which may have similar impacts on a listed species or its habitat.

In determining which projects or activities should be evaluated while reviewing cumulative impacts to endangered species or their habitat, a "rule of reason" should be applied which considers, inter alia, the sequence of those impacts, the degree of administrative discretion remaining to be exercised, and similar factors.

Cumulative Impacts - Sec. 7 of the Endangered Species Act (Dec. 28, 1973, 87 Stat. 884, 892), M-36905 (July 19, 1978) 85 I.D. 275

ENVIRONMENTAL QUALITY
(See also Air Quality, Pollution, Water Pollution Control--if included in this Index.)

GENERALLY

It is appropriate for the Bureau of Land Management to reject a right-of-way application for a pipeline to convey water from a spring on public lands to private lands where it has determined that the overall effect of granting similar applications in a given area would be adverse to the public interest and allowance of one application might establish a precedent contrary to the public interest.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

Where the primary reason for the State Office rejection of a millsite application appears to be that the Environment Protection Agency has recommended against the issuance of a patent because of possible adverse effects on the environment which the Federal Government will not be able to control if patent issues, the decision of the State Office will be reversed where the applicant shows that he has fulfilled the requirement of 30 U.S.C. § 42 (1970), and where the State having jurisdiction over the operation after patent issues has a strict environmental protection law with safeguards against possible adverse effects on the environment.

Utah International, Inc., 36 IBLA 219 (Aug. 8, 1978)

EQUITABLE ADJUDICATION

GENERALLY

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to cognizable occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, an invalid claim cannot be perfected, and appellant has not shown wherein she is entitled to equitable adjudication under 43 CFR 1871.1.

Sandy Fondy, 37 IBLA 48 (Sept. 18, 1978)

ESTOPPEL

Where a BLM employee allegedly misinforms a mining claimant concerning the filing of a patent application, the Government is not estopped from requiring that the resulting error be corrected.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308 (Jan. 10, 1978)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

WZL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

There is no estoppel applicable to the Department of the Interior where it has changed a clearly erroneous regulation to comport with an amendment to the oil and gas leasing laws enacted some 15 years previously. The Department is not precluded from correcting that which is "clearly erroneous."

Yates Petroleum Corp., 34 IBLA 7 (Feb. 8, 1978)

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Long-term belief by Federal officers that land was subject to a valid patent, when, in fact, the land could not legally have been conveyed because of withdrawal or reservation, does not serve as a basis for divesting the Government of title to the land by estoppel.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

ESTOPPEL--Continued

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Where BLM reduced grazier's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazier, equitable estoppel is not invoked against BLM since grazier by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Where the bidder may have understood from BLM that a bank draft was an acceptable form of remittance but submitted a sight draft, there is no basis for estoppel.

Mesa Petroleum Co., 37 IBLA 103 (Sept. 28, 1978)

Reliance upon erroneous advice provided by a non-Governmental filing service cannot relieve an oil and gas applicant of an obligation imposed on him by regulation.

John G. Keane, 37 IBLA 364 (Nov. 2, 1978)

Reliance upon erroneous or incomplete information provided by Government employees cannot create any rights not authorized by law. 43 CFR 1810.3(c).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

ESTOPPEL--Continued

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

EVIDENCE

GENERALLY

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

Willis L. Lawton, 36 IBLA 178 (July 31, 1978)

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

United States v. Larry Joseph Timm, 36 IBLA 316 (Aug. 23, 1978)

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's $10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

EVIDENCE--Continued

ADMISSIBILITY

Evidence of the design and specifications in a subsequent contract over the same sand dunes involved in the instant appeal was not admissible and was properly excluded under Federal Rule of Evidence 407, when offered to prove design defects or feasibility of precautionary measures.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (May 17, 1978) 85 I.D. 107

BURDEN OF PROOF

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

Sec. 503 of the Federal Land Policy and Management Act of 1976 gives the Secretary discretionary authority with respect to issuance of rights-of-way. It would not be in public interest to grant appellant right-of-way because of inadequate water flow in Shoshone River and because of potential interference with planning for a modification of Buffalo Bill Dam. A decision by BLM, made in exercise of its discretion, to reject a water pipeline right-of-way application will be affirmed when the record shows the decision to be a reasoned analysis of factors involved made in due regard for public interest, and no sufficient reason to disturb decision is shown.

Broken H Ranch Co., 34 IBLA 182 (Mar. 21, 1978)

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

A mining claimant who is required by 43 CFR 3833.1-2(b), to file certificates of location with the Bureau of Land Management within 90 days of the date of location of his claims, has the burden of rebutting the presumption that Bureau officials properly discharged their official duties in receiving and date stamping all such certificates properly tendered to them. A mere assertion that Bureau officials did not properly discharge their duties fails to meet the claimant's burden of proof.

E. M. Koppen, 36 IBLA 379 (Aug. 31, 1978)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

In a hearing held pursuant to the Administrative Procedure Act, evidence sufficient to support a decision must be reliable, probative, and substantial. 5 U.S.C. § 556(d) (1976).

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

OFFICIAL NOTICE

The Board of Land Appeals may take official notice of the approved plats of official surveys.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

PRESUMPTIONS

In a Government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts included in the record, regular on their face and indicating proper service.

United States v. Bonda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where the evidence in an administrative appeal raises countervailing legal presumptions of equal probative worth, a factfinding hearing may be ordered pursuant to 43 CFR 4.415.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement

EVIDENCE--Continued

PRESUMPTIONS--Continued

with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

A mining claimant who is required by 43 CFR 3833.1-2(b), to file certificates of location with the Bureau of Land Management within 90 days of the date of location of his claims, has the burden of rebutting the presumption that Bureau officials properly discharged their official duties in receiving and date stamping all such certificates properly tendered to them. A mere assertion that Bureau officials did not properly discharge their duties fails to meet the claimant's burden of proof.

E. M. Koppen, 36 IBLA 379 (Aug. 31, 1978)

The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied.

Even if there were a mistake in the issuance of a patent, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where: (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires; or (4) significant equitable considerations are involved.

Where more than 6 years have passed after the issuance of a patent, suit by the United States to vacate and annul the patent cannot be sustained, 43 U.S.C. § 1166 (1970), absent a positive showing of fraud practiced upon the United States.

H. B. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

Although in certain circumstances a rebuttable presumption of a mining claim's validity may be indulged, the presumption does not arise to support an application for patent of the fee title. The patent applicant is the movant party, and as such it is his obligation to make a satisfactory showing of his entitlement under the law and regulations.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

SUFFICIENCY

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

EVIDENCE--Continued

SUFFICIENCY--Continued

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

In a hearing held pursuant to the Administrative Procedure Act, evidence sufficient to support a decision must be reliable, probative, and substantial. 5 U.S.C. § 556(d) (1976).

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

WEIGHT

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

EXCHANGES OF LAND
(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges and Projects--if included in this Index.)

GENERALLY

The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where such values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

Paul Kellerblock, 38 IBLA 160 (Dec. 5, 1978)

EXECUTIVE ORDERS AND PROCLAMATIONS

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

CLOSURE ORDERS

Generally

In an application for review of an imminent danger withdrawal order where the alleged imminently dangerous conditions relate to roof conditions, there is no guarantee from the face of a modification order issued by a different inspector 36 hours after the issuance of the original order that the conditions described in the modification existed at the time of the issuance of the original order.

A modification order issued 36 hours after issuance of an imminent danger order while allegedly curing defects in the description in the original order of conditions or practices, did not satisfy the requirement of promptness of notification implicit in the mandate of sec. 107 of the Act.

Armco Steel Corp. (On Reconsideration), 8 IBMA 245 (Feb. 13, 1978) 85 I.D. 36

MANDATORY SAFETY STANDARDS

Self-rescue Devices

Where a mine employee is observed underground without a self-rescue device, the operator properly may be held to be in violation of 30 CFR 75.1714-2(a).

Rushton Mining Co., 8 IBMA 255 (Feb. 16, 1978) 85 I.D. 63

Violations

Negligence

An operator's freedom from negligence is not a factor to be considered in determining whether a violation of a mandatory safety standard occurred.

Rushton Mining Co., 8 IBMA 255 (Feb. 16, 1978) 85 I.D. 63

PENALTIES

Reasonableness

In view of the operator's negligence in failing to provide "competent, substitute, supervisory personnel" and the seriousness of the resultant mandatory safety standard violation of 30 CFR 75.301, a civil penalty assessment of $400 is not excessive.

Rushton Mining Co., 8 IBMA 255 (Feb. 16, 1978) 85 I.D. 63

FEDERAL EMPLOYEES AND OFFICERS

GENERALLY

An agent of the Government has no authority to grant a right contrary to a statute of the Congress.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

Personnel of BLM are not required to alter, modify, or correct an application for a right-of-way in order to conform such application to the requirements of the regulation under which it was filed.

Beehive Telephone Co., Inc., 38 IBLA 80 (Nov. 9, 1978)

AUTHORITY TO BIND GOVERNMENT

An agent of the Government has no authority to grant a right contrary to a statute of the Congress.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

WZL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Long-term belief by Federal officers that land was subject to a valid patent, when, in fact, the land could not legally have been conveyed because of withdrawal or reservation, does not serve as a basis for divesting the Government of title to the land by estoppel.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

Reliance upon erroneous information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law. The fact that a coal prospecting permittee alleges he was assured by BLM employees that he would receive permit extensions does not prevent the applicability of subsequent legislation which prohibits such extensions from causing his extension applications to be rejected.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Where BLM reduced grazier's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazier, equitable estoppel is not invoked against BLM since grazier by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

Where a mining claimant alleges that forest rangers allowed him to build and occupy a cabin on the claim without informing him that it was illegal to do so, it is not appropriate to estop the Government from declaring the claim null and void, for several reasons: mere acquiescence in an action is not "affirmative misconduct" by a Government employee, as it was not false representation or concealment of material facts done with the intent that the claimant rely thereon; the impression created by the inaction of the forest rangers was not erroneous and, so, claimant was not misled, as he could rightfully move the cabin to the site and occupy it as long as so doing was incident to mineral development of a valid mining claim; and because the claimant should have known that he could not live on the premises indefinitely despite his failure to develop the claim, and that he would have to move the cabin or lose it, if the claim was declared null and void.

The Government is not barred from declaring a mining claim null and void by the doctrine of laches.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

Reliance upon erroneous advice provided by a non-Governmental filing service cannot relieve an oil and gas applicant of an obligation imposed on him by regulation.

John G. Keane, 37 IBLA 364 (Nov. 2, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

GENERALLY

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

The failure of a mining claimant to file the notice of recordation required by sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and appellant's representatives.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

George T. McDonald, Cascade Ranches, Inc., 35 IBLA 75 (May 12, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

R. Wade Holder, et al., 35 IBLA 169 (May 22, 1978)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

Donald M. Little, 37 IBLA 1 (Sept. 6, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold F. Hedell, 37 IBLA 22 (Sept. 12, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

James F. Giancarlo, 37 IBLA 88 (Sept. 22, 1978)

Leland H. Bray, 37 IBLA 120 (Oct. 3, 1978)

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1970).

Richard O. Dale, et al., 38 IBLA 175 (Dec. 6, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Where the owner of unpatented mining claims located after Oct. 21, 1976, fails to file evidence of annual assessment work or a notice of intention to hold the claims prior to Dec. 31 of the year following the calendar year in which the claims were located, the claims are properly deemed abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C.A. § 1744 (Supp. 1978), and 43 CFR 3833.2-1(b)(1) and 43 CFR 3833.4(a).

Public Service Co. of Oklahoma, 38 IBLA 193 (Dec. 6, 1978)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

Where off-road vehicles pose a potential threat to plants proposed for listing under the Endangered Species Act of 1973, 87 Stat. 884, as endangered, and interfere with the educational and scientific value of an area of the public lands which its status as a registered natural landmark under the Historic Sites Act, as amended, 16 U.S.C. §§ 461-467 (1976), seeks to enhance, the BLM may close such area of the public lands to off-road vehicular use, pending further study, pursuant to the multiple use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732 and 1733 (1976).

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

ASSESSMENT WORK

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

W. A. Starr and Ida Elsie Botiller, 38 IBLA 74 (Nov. 9, 1978)

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

John R. Caurruthers, 38 IBLA 77 (Nov. 9, 1978)

DISCLAIMERS OF INTEREST

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

Grace Cooley Coleman, Leota Ferrell, 35 IBLA 236 (May 26, 1978)

EXCHANGES

The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where snch values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

Paul Kellerblock, 38 IBLA 160 (Dec. 5, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GRAZING LEASES AND PERMITS

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

A decision made under 43 CFR 4.470 et seq. regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

PUBLIC PARTICIPATION

Public notice and hearing is not required by the Code of Federal Regulations prior to closure of areas of the public lands to outdoor recreation use pursuant to 43 CFR 6010.4, implementing the multiple use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732 and 1733 (1976).

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

Where the owner of unpatented mining claims located after Oct. 21, 1976, fails to file evidence of annual assessment work or a notice of intention to hold the claims prior to Dec. 31 of the year following the calendar year in which the claims were located, the claims are properly deemed abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Oct. 21, 1976, 43 U.S.C.A. § 1744 (Supp. 1978), and 43 CFR 3833.2-1(b)(1) and 43 CFR 3833.4(a).

Public Service Co. of Oklahoma, 38 IBLA 193 (Dec. 6, 1978)

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

R. Wade Holder, et al., 35 IBLA 169 (May 22, 1978)

Owners of unpatented mining claims located after Oct. 21, 1977, must file a copy of the official record of the notice of location or certificate of location with the appropriate State Office of the Bureau of Land Management within 90 days of the date of location notwithstanding that the filing would be required prior to the promulgation of regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations.

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

Irwin W. Sweeney, 34 IBLA 205 (Mar. 23, 1978)

Pursuant to sec. 314(b) of the Federal Land Policy and Management Act of 1976, a copy of the official record of the notice of location of a mining claim must be filed within 90 days after location of the claim. In computing this period the date of location is not counted but the last day of the period is. Thus, when a claim is located on Sept. 1, 1977, a notice filed on

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Dec. 1, 1977, is 1 day late, Nov. 30, 1977, being the 90th day.

Robert Thompson, 34 IBLA 319 (Apr. 24, 1978)

"Date of location." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations each within its area of jurisdiction. BLM State Offices properly refuse to record notices of location of mining claims not received by the proper BLM State Office before the end of the 90-day period set by statute.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded in the proper office of the Bureau of Land Management within 90 days from the date of location, not within 90 days from the date the claims were recorded under State law. BLM properly refuses to accept for recordation notices of location filed after the 90-day period.

Foyle Mason, 35 IBLA 40 (May 8, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Where certificates of location as to mining claims have not been filed (received and date stamped) at the proper Bureau of Land Management office within 90 days of the date of location, as required by the regulation, 43 CFR 3833.1-2(b), for claims located after Oct. 21, 1976, the Bureau must refuse to accept the certificates and declare the claims to be null and void.

Neither the Federal Land Policy and Management Act of 1976 nor the applicable regulations make provision for relief where the death of an employee instructed to file certificates of location for the mining claims of his employer, as required by 43 CFR 3833.1-2(b), causes the filing to be more than 90 days after the date of location of the claims.

E. M. Koppen, 36 IBLA 379 (Aug. 31, 1978)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

G. Antolini & Son, 37 IBLA 13 (Sept. 8, 1978)

William E. Rhodes, 38 IBLA 127 (Nov. 22, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

James F. Giancarlo, 37 IBLA 88 (Sept. 22, 1978)

Leland H. Bray, 37 IBLA 120 (Oct. 3, 1978)

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

REPEALERS

Repeal of the homestead laws renders moot the question of whether a private contestant can earn a preference right to enter by procuring the cancellation of a contestee's homestead entry for reasons not shown by Bureau of Land Management (BLM) records.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (Jan. 5, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

REPEALERS--Continued

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1970).

Richard O. Dale, et al., 38 IBLA 175 (Dec. 6, 1978)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

RIGHTS-OF-WAY

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

Sec. 503 of the Federal Land Policy and Management Act of 1976 gives the Secretary discretionary authority with respect to issuance of rights-of-way. It would not be in public interest to grant appellant right-of-way because of inadequate water flow in Shoshone River and because of potential interference with planning for a modification of Buffalo Bill Dam. A decision by BLM, made in exercise of its discretion, to reject a water pipeline right-of-way application will be affirmed when the record shows the decision to be a reasoned analysis of factors involved made in due regard

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

for public interest, and no sufficient reason to disturb decision is shown.

Broken H Ranch Co., 34 IBLA 182 (Mar. 21, 1978)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, payments for use of right-of-way sites should be on an annual basis at the fair market value unless the annual payment would be less than $100. Therefore, although lands may be appraised for a longer future period of time, lump-sum payments for future years may not be demanded for amounts exceeding the statutory amount; instead charges for such amounts should be made on an annual basis.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

RULES AND REGULATIONS

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

Grace Cooley Coleman, Leota Ferrell, 35 IBLA 236 (May 26, 1978)

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SALES

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference-right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT
(See also Surplus Property--if included in this Index.)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

FEES
(See also Accounts--if included in this Index.)

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978)
85 I.D. 186

43 CFR 4125.1-1(m)(3) provides that a grazing lease may be canceled for failure to make timely payment of grazing fees pursuant to 43 CFR 4125.1-1(h). The fact that cash was not available at the time payment was due; that executor of appellant estate relied upon his wife who failed to make timely payment; and that the wife was notified of a death in the family after the due date, does not justify the failure to pay the fee by the required date.

Reese Hennagan Estate, 36 IBLA 399 (Sept. 5, 1978)

GEOLOGICAL SURVEY

The Geological Survey is the Secretary's technical expert in matters concerning coal permits and leases and the Secretary is entitled to rely on its reasoned analysis.

Where a request to modify a coal lease by adding acreage to it is rejected by the BLM solely on the basis of conclusory statement of the Geological Survey that the area applied for is capable of being developed as part of an independent operation and the factual basis for that conclusion does not appear in the record, the decision will be set aside and the case remanded for the

GEOLOGICAL SURVEY--Continued

compilation of a more complete record and readjudication of the request.

Intermountain Exploration Co., 35 IBLA 15 (May 4, 1978)

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

GEOTHERMAL LEASES

GENERALLY

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased be subject to nonsurface occupancy stipulations.

Alaska Pacific Lumber Co., 36 IBLA 88 (July 12, 1978)

Decisions by BLM to refrain from leasing certain lands for geothermal resources will be set aside and the cases remanded where a lease applicant shows on appeal that such decisions failed to take into account relevant considerations of public interest.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

APPLICATIONS

Generally

Where lands in issue formerly were included in a now terminated geothermal lease, and no Federal Register listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

Laura J. Spangler, 35 IBLA 29 (May 5, 1978)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased be subject to nonsurface occupancy stipulations.

Alaska Pacific Lumber Co., 36 IBLA 88 (July 12, 1978)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Sulphur River Exploration, Inc., 36 IBLA 307 (Aug. 21, 1978)

A decision rejecting an application for a geothermal resources lease because the United States does not own the mineral resource will be set aside and the case remanded when the land status records reflect ostensible legal title in the Federal Government.

Dennis Potts, 36 IBLA 329 (Aug. 28, 1978)

A decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands possess a high visual quality, and neither the EAR nor the remaining documents of record clearly bear out such a determination and where it appears that BLM has issued leases on adjacent lands, the decisions rejecting the leases will be set aside and the cases remanded for further consideration to determine whether the lands should be leased with protective stipulations.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

Antoinette Carter, 37 IBLA 222 (Oct. 12, 1978)

BONDS

A regulation which provides that coverage of nationwide oil and gas bond in force at the effective date of the regulation may be expanded by a rider to include geothermal resources leases does not permit a replacement nationwide oil and gas bond executed after the effective date of the regulation to be so modified to include geothermal resources operations.

Mono Power Co., 37 IBLA 100 (Sept. 28, 1978)

COMPETITIVE LEASES

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the

GEOTHERMAL LEASES--Continued

COMPETITIVE LEASES--Continued

rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

DISCRETION TO LEASE

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land will generally be upheld where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Cortex, Inc., 34 IBLA 239 (Mar. 28, 1978)

An exercise of the Secretary's discretion by Bureau of Land Management State Office to refrain from issuing a geothermal lease for a given tract of land will be sustained where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest.

The Anschutz Corp., 34 IBLA 270 (Mar. 31, 1978)

Where lands in issue formerly were included in a now terminated geothermal lease, and no Federal Register listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

Laura J. Spangler, 35 IBLA 29 (May 5, 1978)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will be generally upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land will not be adversely affected as BLM described in rejecting the application.

Oxy Petroleum, Inc., 36 IBLA 59 (June 30, 1978)

This Department may lease national forest lands for geothermal resources only with the consent of the Department of Agriculture. The Bureau of Land Management is bound by the requirement of that Department that the particular national forest lands so leased be subject to nonsurface occupancy stipulations.

Alaska Pacific Lumber Co., 36 IBLA 88 (July 12, 1978)

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE--Continued

A decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands possess a high visual quality, and neither the EAF nor the remaining documents of record clearly bear out such a determination and where it appears that BLM has issued leases on adjacent lands, the decisions rejecting the leases will be set aside and the cases remanded for further consideration to determine whether the lands should be leased with protective stipulations.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-03 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

ENVIRONMENTAL PROTECTION

Generally

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land will generally be upheld where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Cortex, Inc., 34 IBLA 239 (Mar. 28, 1978)

An exercise of the Secretary's discretion by Bureau of Land Management State Office to refrain from issuing a geothermal lease for a given tract of land will be sustained where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest.

The Anschutz Corp., 34 IBLA 270 (Mar. 31, 1978)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain

GEOTHERMAL LEASES--Continued

ENVIRONMENTAL PROTECTION--Continued

Generally--Continued

lands will be generally upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land will not be adversely affected as BLM described in rejecting the application.

Oxy Petroleum, Inc., 36 IBLA 59 (June 30, 1978)

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands possess a high visual quality, and neither the EAR nor the remaining documents of record clearly bear out such a determination and where it appears that BLM has issued leases on adjacent lands, the decisions rejecting the leases will be set aside and the cases remanded for further consideration to determine whether the lands should be leased with protective stipulations.

California Geothermal, Inc., 37 IBLA 172 (Oct. 10, 1978)

HEARINGS

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

LANDS SUBJECT TO

Where lands in issue formerly were included in a now terminated geothermal lease, and no Federal Register listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

Laura J. Spangler, 35 IBLA 29 (May 5, 1978)

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Sulphur River Exploration, Inc., 36 IBLA 307 (Aug. 21, 1978)

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

Antoinette Carter, 37 IBLA 222 (Oct. 12, 1978)

GEOTHERMAL LEASES--Continued

REINSTATEMENT

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if the lessee shows that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where late payment was caused by circumstances arising from the change in postal rates 3 days prior to the due date, the lease may be reinstated.

Ronald E. Stone, 37 IBLA 306 (Oct. 23, 1978)

TERMINATION

Under 30 U.S.C. § 1004(c) (1970) and 43 CFR 3205.3-2(a), a geothermal resources lease is automatically terminated when the lessee fails to pay advance rental on or before the anniversary date of the lease. Rental payment which arrives at a BLM State Office by Western Union after normal business hours on the anniversary date constitutes payment on the next business day, and is accordingly untimely, so that the lease is properly regarded as having automatically terminated by operation of law.

Failure to make full payment of rental on a geothermal resources lease on or before its anniversary date automatically terminates the lease. Where a lessee has not filed a formal written relinquishment on or before the anniversary date of the lease, as required by 43 CFR 3244.1, his lease account is chargeable with and he is liable to pay advance rental on all of his leasehold on or before the anniversary date. The lessee is not permitted, in lieu of filing a formal relinquishment, to relinquish part of his leasehold by submitting partial payment designated as rental only for the specific acreage he desires to retain.

Robert L. Wheeler, 33 IBLA 371 (Jan. 23, 1978)

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if the lessee shows that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where late payment was caused by circumstances arising from the change in postal rates 3 days prior to the due date, the lease may be reinstated.

Ronald E. Stone, 37 IBLA 306 (Oct. 23, 1978)

GRAZING AND GRAZING LANDS

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the

GRAZING AND GRAZING LANDS--Continued

trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Evidence is insufficient to support a finding of a willful trespass where it fails to show that the alleged trespasser intended to disregard the regulation prohibiting trespass or that he was plainly indifferent to its requirements or that he acted with gross neglect of a known duty.

Where the administrative law judge does not make a finding as to whether a trespass was willful or not clearly willful, the Board of Land Appeals may make this finding based upon the record as if it were sitting as trier of fact.

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

GRAZING LEASES

GENERALLY

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

George T. McDonald, Cascade Ranches, Inc., 35 IBLA 75 (May 12, 1978)

Where record indicates no dispute that there was grazing use of public lands in issue from 1951 to 1975 by current grazing lease applicant's predecessors in interest, followed by 1-year hiatus in valid grazing use prior to current applicant's filing for lease, since length of hiatus was reasonable under circumstances, and since general intention of historical use criterion in 43 CFR 4121.2-1(d)(2) was not contradicted during break in valid grazing use, BLM was not arbitrary in applying historical use criterion in favor of one applicant in a case involving conflicting grazing lease

GRAZING LEASES--Continued

GENERALLY--Continued

applications. Here, hiatus was approximately one grazing season and was occasioned by purchase at foreclosure sale of preference lands by first mortgagee, who conveyed those lands 1 year later to current applicant, a grazing operator.

Considering record as a whole, Board concludes that neither of appellants has shown that District Office decision apportioning, on basis of historical use in favor of one appellant and topography in favor of other appellant, grazing lands between two lease applicants was arbitrary or capricious, or without rational basis, or inequitable.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

APPLICATIONS

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Past use of public land for grazing in trespass does not constitute cognizable historical use for the purpose of resolving conflicting applications for a grazing lease.

An applicant to purchase land under R.S. 2455 gains no rights in the land therefrom as against the United States and is not entitled to preferential treatment on an application for a grazing lease of the same land.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Priority of filing is not one of criteria listed in 43 CFR 4121.2-1(d)(2) for adjudicating conflicting grazing lease applications. Therefore, one appellant's filing for lease before other appellant gives former no rights superior to latter's.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V, 1975), but the record on appeal is incomplete with respect to the existence of such policy, the record should be remanded for further documentation.

Neither an application for an Alaska grazing lease nor an application for assignment of a grazing lease confer upon the applicant a right to a lease, the granting thereof being discretionary and subject to any changes in Secretarial policy.

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

GRAZING LEASES--Continued

APPORTIONMENT OF LAND

Priority or filing is not one of criteria listed in 43 CFR 4121.2-1(d)(2) for adjudicating conflicting grazing lease applications. Therefore, one appellant's filing for lease before other appellant gives former no rights superior to latter's.

Where record indicates no dispute that there was grazing use of public lands in issue from 1951 to 1975 by current grazing lease applicant's predecessors in interest, followed by 1-year hiatus in valid grazing use prior to current applicant's filing for lease, since length of hiatus was reasonable under circumstances, and since general intention of historical use criterion in 43 CFR 4121.2-1(d)(2) was not contradicted during break in valid grazing use, BLM was not arbitrary in applying historical use criterion in favor of one applicant in a case involving conflicting grazing lease applications. Here, hiatus was approximately one grazing season and was occasioned by purchase at foreclosure sale of preference lands by first mortgagee, who conveyed those lands 1 year later to current applicant, a grazing operator.

Considering record as a whole, Board concludes that neither of appellants has shown that District Office decision apportioning, on basis of historical use in favor of one appellant and topography in favor of other appellant, grazing lands between two lease applicants was arbitrary or capricious, or without rational basis, or inequitable.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

CANCELLATION OR REDUCTION

Where a sec. 15 grazing lessee loses control of lands recognized as the basis for her preference right to a portion of the lands within the grazing lease, the Bureau of Land Management properly cancels the grazing lease as to those lands.

When a sec. 15 grazing lease is canceled in part for loss of control of preference lands, allegations concerning the lessee's control of other lands contiguous to the grazing lease, or concerning a possible conflicting applicant's lack of qualifications to hold a grazing lease, are not relevant to show cause why the grazing lease should not be canceled in part.

Remedies for an alleged breach of a private lease agreement involving preference lands for a sec. 15 grazing lease must be sought in the appropriate courts and not before the Department of the Interior, which has no jurisdiction over such matters.

Where the Bureau of Land Management erroneously described a portion of the land listed in a notice to show cause why a grazing lease should not be canceled in part, the lessee is not denied due process where the land could not be confused with other lands in the grazing lease, where BLM corrected and explained its mistake in the subsequent decision, where no prejudice from the mistake is alleged or evident, and where the lessee has had every opportunity to present her arguments on the issues involved in the BLM actions.

If a grazing lease, canceled in part for loss of control of preference lands, expires by its terms prior to decision on the appeal of the cancellation and if the grazing lease is renewed solely because the appellate decision has not been rendered, with no consideration of the lessee's or conflicting preference rights, the Board of Land Appeals will consider the appeal of the cancellation as applicable to the renewed lease.

Evelyn Elsman, 35 IBLA 23 (May 5, 1978)

GRAZING LEASES--Continued

CANCELLATION OR REDUCTION--Continued

43 CFR 4125.1-1(m)(3) provides that a grazing lease may be canceled for failure to make timely payment of grazing fees pursuant to 43 CFR 4125.1-1(h). The fact that cash was not available at the time payment was due; that executor of appellant estate relied upon his wife who failed to make timely payment; and that the wife was notified of a death in the family after the due date, does not justify the failure to pay the fee by the required date.

Reese Hennagan Estate, 36 IBLA 399 (Sept. 5, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. A grazing lease is properly canceled where the lessee fails to pay the rental pursuant to 43 CFR 4125.1-1(h) and 4125.1-1(m)(3). The Boards of Appeal of this Department have no authority to declare a Secretary's regulation invalid.

Sombrero Ranches, Inc., 38 IBLA 327 (Dec. 19, 1978)

PREFERENCE RIGHT APPLICANTS

Priority of filing is not one of criteria listed in 43 CFR 4121.2-1(d)(2) for adjudicating conflicting grazing lease applications. Therefore, one appellant's filing for lease before other appellant gives former no rights superior to latter's.

Where record indicates no dispute that there was grazing use of public lands in issue from 1951 to 1975 by current grazing lease applicant's predecessors in interest, followed by 1-year hiatus in valid grazing use prior to current applicant's filing for lease, since length of hiatus was reasonable under circumstances, and since general intention of historical use criterion in 43 CFR 4121.2-1(d)(2) was not contradicted during break in valid grazing use, BLM was not arbitrary in applying historical use criterion in favor of one applicant in a case involving conflicting grazing lease applications. Here, hiatus was approximately one grazing season and was occasioned by purchase at foreclosure sale of preference lands by first mortgagee, who conveyed those lands 1 year later to current applicant, a grazing operator.

Considering record as a whole, Board concludes that neither of appellants has shown that District Office decision apportioning, on basis of historical use in favor of one appellant and topography in favor of other appellant, grazing lands between two lease applicants was arbitrary or capricious, or without rational basis, or inequitable.

John Rattray, Elmer L. Wilson, 36 IBLA 282 (Aug. 21, 1978)

RENEWAL

A decision renewing a grazing lease and rejecting a conflicting application which is rendered in accordance with the governing statutory standard set out in sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752(c) (___ Supp. 197_), will not be overturned in the absence of convincing reasons that the award is not warranted.

Past use of public land for grazing in trespass does not constitute cognizable historical use for the purpose of resolving conflicting applications for a grazing lease.

Fancher Bros., 33 IBLA 262 (Jan. 5, 1978)

GRAZING LEASES--Continued

RENEWAL--Continued

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

George T. McDonald, Cascade Ranches, Inc., 35 IBLA 75 (May 12, 1978)

GRAZING PERMITS AND LICENSES

GENERALLY

A decision of a district manager to consolidate and assign fence maintenance responsibilities to various grazing permittees will be upheld on appeal where a permittee attacking such decision fails to establish that the assignment was arbitrary and capricious.

Bert N. Smith, Paul W. Smith v. Bureau of Land Management, et al., 36 IBLA 47 (June 30, 1978)

Where BLM reduced grazier's privileges because of his loss of ownership of base property from which his qualifications had not in fact been transferred away for attachment to other property owned by grazier, equitable estoppel is not invoked against BLM since grazier by his own testimony at hearing showed that he was not ignorant of true facts as to lack of transfer back of grazing qualifications and that he did not in fact rely to his detriment on BLM official's representations on that transfer back.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

A decision made under 43 CFR 4.470 et seq. regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

ADJUDICATION

A decision made under 43 CFR 4.470 et seq. regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

APPEALS

When a Federal grazing permittee signs a written trespass settlement and pays, without protest, the amount claimed by BLM in connection with such settlement, the issue of that trespass cannot later be reopened at a hearing before an administrative law judge.

Cloverleaf Land and Livestock Co., 34 IBLA 113 (Feb. 28, 1978)

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

A decision of a district manager to consolidate and assign fence maintenance responsibilities to various grazing permittees will be upheld on appeal where a permittee attacking such decision fails to establish that the assignment was arbitrary and capricious.

Bert N. Smith, Paul W. Smith v. Bureau of Land Management, et al., 36 IBLA 47 (June 30, 1978)

BASE PROPERTY (LAND)

Ownership or Control

Provision of 43 CFR 4115.2-1(e)(8)(i) for termination of grazing permit upon permittee's loss of ownership or control of base property is mandatory.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

CANCELLATION OR REDUCTION

Under 43 CFR 9239.3-2(e), the repetitive nature of grazing trespasses coupled with a negligent failure of licensee to take corrective action supports a finding of willful trespass.

Calvin C. Johnson, 35 IBLA 306 (June 2, 1978)

Provision of 43 CFR 4115.2-1(e)(8)(i) for termination of grazing permit upon permittee's loss of ownership or control of base property is mandatory.

Roger J. Rasmusson, 36 IBLA 98 (July 13, 1978)

FEDERAL RANGE CODE

A decision made under 43 CFR 4.470 et seq. regarding future use of the Federal Range will be set aside if it is necessary that issues involved therein be considered under regulations newly promulgated pursuant to Federal Land Policy and Management Act of 1976.

United States v. View Point Ranches, 37 IBLA 357 (Oct. 31, 1978)

TRESPASS

Where the owner of base property ranchland formally leases out grazing privileges on his own lands and on appurtenant Federal lands, all stock subsequently grazed by the lessee under the terms of the lease will be attributed to the lessor for purposes of calculating trespass liability.

A BLM decision canceling base property qualifications for allegedly willful and repeated trespass is properly voided on appeal where such violations were not charged in the initial Order to Show Cause, and where such Order to Show Cause was not issued by the State Director as is required by 43 CFR 9239.3-2(e).

The retroactive issuance of a grazing permit for livestock foraging on Federal rangeland will moot a charge of trespass to the extent that such permit covers the same days, livestock, and rangelands which are the subject of the trespass charge.

Cloverleaf Land and Livestock Co., 34 IBLA 113 (Feb. 28, 1978)

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

Under 43 CFR 9239.3-2(e), the repetitive nature of grazing trespasses coupled with a negligent failure of licensee to take corrective action supports a finding of willful trespass.

On appeal from a show cause proceeding under 43 CFR 9239.3-2(e), a requirement for ear-tagging of cattle recommended by a district manager and imposed by an administrative law judge will be set aside where the grazer objected thereto and was not accorded proper opportunity to offer evidence thereon. 43 CFR 4112.3-2(a)(4).

Calvin C. Johnson, 35 IBLA 306 (June 2, 1978)

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Evidence is insufficient to support a finding of a willful trespass where it fails to show that the alleged trespasser intended to disregard the regulation prohibiting trespass or that he was plainly indifferent to its requirements or that he acted with gross neglect of a known duty.

Where the administrative law judge does not make a finding as to whether a trespass was willful or not clearly willful, the Board of Land Appeals may make this finding based upon the record as if it were sitting as trier of fact.

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

HEARINGS

(See also Administrative Procedure, Civil Rights, Endangered Species Conservation Act, Federal Coal Mine Health and Safety Act of 1969, Federal Metal and Nonmetallic Mine Safety Act, Geothermal Leases, Grazing Permits and Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

A request for a hearing will be denied in the absence of an assertion of fact which, if proved true, would entitle appellant to the relief sought.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 26, 1978)

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence could be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an administrative law judge's decision declaring the claim null and void will be affirmed.

United States v. Thelma O. Crismon, 34 IBLA 381 (May 2, 1978)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need

HEARINGS--Continued

not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

Where the evidence in an administrative appeal raises countervailing legal presumptions of equal probative worth, a factfinding hearing may be ordered pursuant to 43 CFR 4.415.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard H. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decision-maker, that the decision-maker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

While the Department has discretion as to whether to grant a hearing to an offeror whose high bid is rejected for a competitive geothermal lease, a hearing is not in the public interest where offeror has not explained a procedure in which particular facts could be effectively utilized in an alternative formula for computing minimum bids.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

HOMESTEADS (ORDINARY)

(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

GENERALLY

A homestead claimant in Alaska may be given credit for residence, cultivation and improvements after the time his homestead application is filed but before allowance of entry where the land was subject to appropriation by him or included in an entry against which he had initiated a contest resulting in cancellation of the entry.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a second survey affect property rights acquired under an official survey.

Where an entryman has mistakenly applied for and received a patent on one parcel of land which was not the land he actually occupied, he is not entitled to receive a patent on the land actually occupied by virtue of the fact that the statutes of limitation on the issuance and cancellation of patents has run.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

An entryman's final proof is properly rejected when it is defective on its face, with the final proof showing that the applicable cultivation requirements have not been met.

Ronald E. Geiger, 37 IBLA 33 (Sept. 18, 1978)

AMENDMENT

Prior to the enactment of sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior's authority to correct patents could not be exercised to divest the Government's title to land that was withdrawn or reserved at the time of the mistaken entry. Whether sec. 316 authorizes amendment of a patent in such situations is to be determined in the first instance by the BLM.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

APPLICATIONS

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

CONTESTS

A private contest decision canceling a disputed homestead entry will, in the absence of a timely and proper appeal, cut off all rights which the contestee may have acquired by his entry, and this result will not be affected by the fact that the contestee failed to appear at the contest hearing and, through his own

HOMESTEADS (ORDINARY)--Continued

CONTESTS--Continued

neglect, failed to receive notice of the decision of the administrative law judge.

Repeal of the homestead laws renders moot the question of whether a private contestant can earn a preference right to enter by procuring the cancellation of a contestee's homestead entry for reasons not shown by Bureau of Land Management (BLM) records.

The question of whether a private contestant has procured the cancellation of a contestee's entry for reasons not shown by records of the BLM, is a factual question which is unrelated to the subject matter jurisdiction of the tribunal and which is entirely ancillary to the prior and primary question of the validity of the contestee's entry.

The fact that BLM is not a party to a private contest proceeding does not affect the force or validity of a decision rejecting a final proof.

Wesley Laverne Edwards v. Paul Unruh, 33 IBLA 277 (Jan. 5, 1978)

A private contest complaint which does not set out in clear and concise language a statement of the facts constituting the grounds of contest is properly dismissed.

Eugene A. Whitmill, 34 IBLA 123 (Mar. 2, 1978)

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would reguire cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

FINAL PROOF

A homestead claimant in Alaska may be given credit for residence, cultivation and improvements after the time his homestead application is filed but before allowance of entry where the land was subject to appropriation by

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF--Continued

him or included in an entry against which he had initiated a contest resulting in cancellation of the entry.

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subseguently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

The mere fact homestead final proof in Alaska is filed before allowance of the homesteader's application for entry does not preclude consideration of the final proof if entry is allowed.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

LANDS SUBJECT TO

The rejection of a homestead application in Alaska merely because there are prior-filed homestead applications for the same land is improper and premature where no action has been taken on the conflicting applications. If a prior-filed application is allowed, the land comes within an allowed entry of record and a junior application must be rejected thereafter. However, if the prior application is rejected or withdrawn, it no longer bars allowance of a junior application.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

SETTLEMENT

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

CLASSIFICATION

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land has no value for agricultural or grazing purposes. An application will be remanded for further report from the Department of Agriculture where there is not a clear determination that the land is or is not more valuable for agriculture or grazing than for its timber.

Samuel C. George, 35 IBLA 19 (May 5, 1978)

LANDS SUBJECT TO

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land has no value for agricultural or grazing purposes. An application will be remanded for further report from the Department of Agriculture where there is not a clear determination that the land is or is not more valuable for agriculture or grazing than for its timber.

Samuel C. George, 35 IBLA 19 (May 5, 1978)

INDIAN LANDS
(See also Indian Probate--if included in this Index.)

GENERALLY

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

ALLOTMENTS

Alienation

Pursuant to the Act of July 28, 1955, 69 Stat. 392, as amended (25 U.S.C. § 608 (1970)), and 25 CFR 121.17 et seq., an Indian owner of trust land who consents to sell her interest to the Yakima Tribe is legally entitled to the fair market value therefor.

The party challenging the terms or conditions of a sale of Indian land bears the burden of proving the violation or misconduct alleged.

The individual Indian seller has not upheld her burden of disproving the validity of the Mar. 1976 appraisal as the basis for sale of her land in Oct. 1976, nor has she demonstrated through the proposed testimony of witnesses or other possible evidence, any necessity for ordering a hearing on this question.

Where the subject appraisal was based on the land's "highest and best use" and 5 of the 80 acres were considered by the BIA appraiser as contributing no

value in such a market, the appellant erroneously construed the appraisal as a determination that 5 acres of her land were without value for any purpose.

Under the circumstances of this case, no prejudicial error occurred as a result of the BIA appraiser's failure to estimate the worth, or lack thereof, of an old abandoned structure on appellant's land.

Administrative Appeal of Hazel Hawk Visser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 7 IBIA 22 (Feb. 17, 1978)

FORESTRY

Timber Sales Contract

Administrative Fees

Determining the reasonableness of administrative fees assessed under authority of 25 CFR 141.18 is a matter requiring the exercise of discretionary authority and as such the issue must be directed to the Assistant Secretary for Indian Affairs for resolution.

The Board of Indian Appeals may not resolve a discretionary matter without clear authority from the Secretary.

Under existing regulations neither the Superintendent nor the Area Director had the authority to require collection of other than a 5 percent fee from appellant in the absence of special instructions from the Secretary.

The Secretary or the Assistant Secretary for Indian Affairs has authority to reduce the fixed fees described at 25 CFR 141.18 regardless of whether the charge is for timber sold under regular supervision.

Administrative Appeal of Helen S. Kirschling v. Bureau of Indian Affairs, 7 IBIA 36 (Mar. 17, 1978)

TRIBAL RIGHTS IN ALLOTTED LANDS

The action of the Land Committee of the Yakima Tribe in voting to acquire allotted land at the fair market value as determined by the Bureau of Indian Affairs after an appraisal constituted an offer to purchase and not an acceptance of an offer.

Administrative Appeal of Hazel Hawk Visser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 7 IBIA 22 (Feb. 17, 1978)

The fair market value date is considered to be the date of hearing to determine value.

Interest is due and payable only on the unpaid balance of the fair market value as determined from the date of filing the election to take by the Tribe.

A statutory option held by the Tribe to take interest in land under the Act of Dec. 31, 1970 (84 Stat. 1874, 25 U.S.C. § 607 (1970)), does not vest any right in such interests until payment by the Tribe of the fair-market value as determined by the administrative law judge after hearing if demanded, plus interest.

Estate of Joseph Simmons, Sr., 7 IBIA 43 (Mar. 31, 1978)

INDIAN PROBATE
(See also Indian Lands, Indian Tribes--if included in this Index.)

APPEAL

Administrative Law Judge as Trier of Facts

An administrative law judge's finding based on that part of the evidence which printed words do not preserve are not ordinarily reviewable by the agency, and the administrative law judge's findings on veracity must not be overturned without very substantial preponderance in testimony as recorded.

Estate of Albin (Alvin) Shemamy, 7 IBIA 70 (July 3, 1978)

Timely Filing

Appeals not timely filed under the regulations will be rejected and dismissed.

Estate of Johnny Bill Tustis, 7 IBIA 9 (Jan. 30, 1978)

An appeal not filed within the time specified under Departmental Probate regulations will not be entertained and will be dismissed.

Estate of George (Skunkneck) White Antelope, 7 IBIA 108 (Dec. 6, 1978)

DIVORCE

Indian Custom

Generally

A divorce in accordance with Indian custom may be accomplished unilaterally by either of the parties to a marriage. The fact of a separation, plus an intention on the part of at least one of the parties that the separation shall be permanent, established by competent evidence is sufficient to terminate a marriage.

An Indian custom divorce dissolves a ceremonial marriage as well as an Indian custom marriage.

Estate of Henry Frank Racine, 7 IBIA 1 (Jan. 10, 1978)

In order to accomplish an Indian custom divorce by either of the parties to the marriage, it is necessary to establish by convincing evidence that a separation occurred plus the intent on the part of at least one of the parties that the separation was permanent.

Estate of Matthew Cook, 7 IBIA 62 (May 5, 1978)

HEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)

Generally

Although Indian probate proceedings need not be open, public hearings, parties in interest cannot be excluded therefrom.

Estate of Rena Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

HOMESTEAD RIGHT

Generally

The Department of the Interior has recognized homestead rights in those cases where such rights have been found necessary and purposeful in the distribution of intestate estates under State law.

Estate of Ellen Phillips, 7 IBIA 100 (Dec. 6, 1978)
85 I.D. 438

INDIAN REORGANIZATION ACT of June 18, 1934
(WHEELER-HOWARD ACT) (25 U.S.C. § 464 et seq.)

Generally

The Act recognizes two classes of persons who may take testator's lands by devise, that is, any member of the Tribe having jurisdiction over such lands and legal heirs of the testator or testatrix.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

Construction of Section 4

"Any heir of such member" as used in sec. 464 means those who would, in the absence of a will, have been entitled to share in the estate.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

MARRIAGE

Indian Custom

Generally

In the absence of controlling Federal legislation or formal tribal action, marriages of Indians living in tribal relation may be contracted and dissolved in accordance with Indian custom.

Estate of Henry Frank Racine, 7 IBIA 1 (Jan. 10, 1978)

Proof of Marriage

Proof of a marriage must be established by clear and convincing evidence by the one alleging such a marriage.

Estate of Matthew Cook, 7 IBIA 62 (May 5, 1978)

REHEARING

Generally

A rehearing will be granted where a party has been denied a full opportunity to be heard.

Estate of Matthew Cook, 7 IBIA 62 (May 5, 1978)

Pleading, Timely Filing

A petition for rehearing mailed on the 60th day but not received in the Department of the Interior on or before the 60th day has not been timely filed.

Estate of Roger Moque Tosee, 7 IBIA 7 (Jan. 13, 1978)

INDIAN PROBATE--Continued

REOPENING

Generally

In order to justify reopening of an estate that has been closed in excess of the 3-year limitation found in 43 CFR 4.242(h) three elements must generally be satisfied. First, it must appear that a manifest injustice will likely prevail if a petition for reopening is denied. Secondly, it must be demonstrated that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioner. Thirdly, there must exist a possibility for correction of the manifest injustice.

Estate of Leonard (Raymond) Cooper, 7 IBIA 5 (Jan. 11, 1978)

SECRETARY'S AUTHORITY

Generally

Proceedings for the determination of a deceased Indian's heirs in a case over which the Department had no jurisdiction must be dismissed.

Estate of Gladys Marie Bellmard (Randall, Preston, Harris) Wilson, 7 IBIA 111 (Dec. 29, 1978)
86 I.D. 1 (1979)

STATE LAW

Applicability to Indian Probate, Intestate Estates

Generally

The Department is not foreclosed from considering as evidence in an heirship determination an affidavit of paternity which was not executed in accordance with State law.

Estate of Terrance Wayne White Bear, 7 IBIA 80 (July 27, 1978)

Under sec. 5 of the General Allotment Act, 25 U.S.C. § 348 (1976), the Department is required to apply the law of the State in which the allotment is located in determining the heirs of the deceased allottee.

Estate of Ellen Phillips, 7 IBIA 100 (Dec. 6, 1978)
85 I.D. 438

TRIBAL COURTS

Generally

Decrees of Tribal courts regarding domestic relations of Indians have generally been recognized by the Department of the Interior, State courts, and Federal courts.

Estate of Clark Joseph Robinson, 7 IBIA 74 (July 26, 1978)
85 I.D. 294

WILLS (See also INHERITING--if included in this Index.)

Generally

There is a strong presumption that one who takes the time to write a will does not intend to die intestate.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

INDIAN PROBATE--Continued

WILLS (See also INHERITING--if included in this Index.) --Continued

Generally--Continued

Under the circumstances of this case, appellant's paternity is not an issue cognizable by the Department in probating her mother's will. In accordance with sec. 8(b) of the Administrative Procedure Act findings should be limited to issues necessary to the disposition of a case.

Estate of Rena Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

Construction of

In construing a will, the court is faced with the situation as it existed when the will was drawn and must consider all surrounding circumstances, the objects sought to be obtained and endeavor to determine what was in the testator's mind when he made the bequests, and the court must not make a new will for testator or testatrix or warp his language in order to obtain a result which the court might feel to be right.

It is well established that, in construing a will the courts will seek for and give effect to the intent, scheme, or plan of the testator, if it be lawful.

The intent must be gathered when possible from the words of the will, construed in their natural and obvious sense.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

Disapproval of Will

Regardless of scope of administrative law judge's authority to grant or withhold approval of the will of an Indian under statute, there is not vested in the judge the power to revoke or rewrite a will or a part thereof which reflects a rational testamentary scheme disposing of trust or restricted property.

Estate of Dorothy Sheldon, 7 IBIA 11 (Feb. 7, 1978)
85 I.D. 31

Insane Delusions

There is a difference between an insane delusion and a false belief. A belief is not an insane delusion where it is arrived at through a process of reasoning, even though such reasoning may be faulty, incorrect or illogical.

Estate of George E. Easley, IA-T-32 (July 13, 1978)

Testamentary Capacity

Generally

A testator does not lack testamentary capacity merely because he is unable to manage his own business affairs or is under guardianship.

Estate of George E. Easley, IA-T-32 (July 13, 1978)

INDIAN PROBATE--Continued

WILLS (See also INHERITING--if included in this Index.) --Continued

Undue Influence

Generally

Undue influence must be a "wrongful influence," and influence acquired through kindness, affection, or attention, especially of one relative for another, is not wrongful.

Estate of George E. Easley, IA-T-32 (July 13, 1978)

Unnatural Will

An unequal distribution by will to the natural objects of testator's bounty does not constitute an inequitable or unnatural will.

Estate of George E. Easley, IA-T-32 (July 13, 1978)

WITNESSES

Cross-examination

A full and true disclosure of the facts was denied when only the presiding judge was permitted to ask questions of a crucial witness. This procedure violated sec. 7(c) of the Administrative Procedure Act.

Estate of Rena Marie Edge, 7 IBIA 53 (Apr. 25, 1978)

YAKIMA TRIBES

Generally

The fair market value date is considered to be the date of hearing to determine value.

Interest is due and payable only on the unpaid balance of the fair market value as determined from the date of filing the election to take by the Tribe.

A statutory option held by the Tribe to take interest in land under the Act of Dec. 31, 1970 (84 Stat. 1874, 25 U.S.C. § 607 (1970)), does not vest any right in such interests until payment by the Tribe of the fair-market value as determined by the administrative law judge after hearing if demanded, plus interest.

Estate of Joseph Simmons, Sr., 7 IBIA 43 (Mar. 31, 1978)

INDIAN TRIBES
(See also Indian Probate--if included in this Index.)

JURISDICTION

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a State where the State has assumed jurisdiction over the tribe's reservation pursuant to the Act of Aug. 15, 1953, P.L. 280, 67 Stat. 588, 18 U.S.C. § 1162 (1976).

Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907 (Nov. 14, 1978) 85 I.D. 433

INDIAN TRIBES--Continued

SOVEREIGN POWERS

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a State where the State has assumed jurisdiction over the tribe's reservation pursuant to the Act of Aug. 15, 1953, P.L. 280, 67 Stat. 588, 18 U.S.C. § 1162 (1976).

Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907 (Nov. 14, 1978) 85 I.D. 433

TRIBAL AUTHORITY

Tribes as a treaty right have the authority to impose restrictions or limitations as to who may be permitted to travel within a closed area of a reservation.

Administrative Appeal of Frank L. Glaspey, Jr., 7 IBIA 92 (Aug. 17, 1978)

INDIANS

CRIMINAL JURISDICTION

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a State where the State has assumed jurisdiction over the tribe's reservation pursuant to the Act of Aug. 15, 1953, P.L. 280, 67 Stat. 588, 18 U.S.C. § 1162 (1976).

Criminal Jurisdiction on the Seminole Reservations in Florida, M-36907 (Nov. 14, 1978) 85 I.D. 433

INTERVENTION

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

JUDICIAL REVIEW
(See also Administrative Procedure--if included in this Index.)

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

LACHES

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

LOWER COLORADO RIVER LAND USE

It is not an abuse of discretion or arbitrary or capricious for the District Manager, Yuma District, to deny requests for renewals of residential permits in the Parker Strip, Lower Colorado River Land Use Area, for 5 years, in lieu of the existing permits of indefinite term subject to annual renewal, where the permits are subject to the provision that the United States may terminate the permits after 90 days written notice.

Earl W. Archer, et al., Robert F. Moore, et al., D-78-1, D-78-2 (Aug. 9, 1978)

It is proper to cancel a residential cabin site permit in the Lower Colorado River Land Use Area for continued commercial use in violation of the terms of the permit.

Asa F. Haynes, Wanda L. Russell, D-78-8 (Aug. 21, 1978)

MATERIALS ACT

Where the purchaser of rock under a cash sale contract authorized by the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (1970), fails to remove any of the rock and requests a credit for the purchase price, such a request will be denied as being tantamount to a refund and purchaser under a fixed unit material sale is not entitled to a refund even though the amount of material removed is less than the estimated total volume shown in the contract.

Weyerhaeuser Co., 33 IBLA 259 (Jan. 5, 1978)

MATERIALS ACT--Continued

The purchaser of rock under a cash sale contract authorized by the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (1970), is entitled to a refund, based on resale value less administrative costs, for rock covered by the contract which is available but not removed from the site by such purchaser.

Weyerhaeuser Co. (On Reconsideration), 34 IBLA 244 (Mar. 28, 1978)

A decision by a Bureau of Land Management District Office rejecting an application for an extension of a mineral materials sale contract solely for the reason it was not timely filed in accordance with 43 CFR 3610.7 will be set aside and remanded for the authorized officer to determine whether the application may be considered as timely pursuant to 43 CFR 1821.2-2(g). This section permits the authorized officer to consider a document as being timely filed except where the law does not permit him to do so, the rights of a third party or parties have intervened, or the authorized officer determines that further consideration of the document would unduly interfere with the orderly conduct of business.

Don Kelland Materials, Inc., 35 IBLA 133 (May 22, 1978)

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

MILLSITES
(See also Mining Claims--if included in this Index.)

DETERMININATION OF VALIDITY

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1970), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Ray Paden, 33 IBLA 380 (Jan. 25, 1978)

Where the primary reason for the State Office rejection of a millsite application appears to be that the Environment Protection Agency has recommended against the issuance of a patent because of possible adverse effects on the environment which the Federal Government will not be able to control if patent issues, the decision of the State Office will be reversed where the applicant shows that he has fulfilled the requirement of 30 U.S.C. § 42 (1970), and where the State having jurisdiction over the operation after patent issues has a strict environmental protection law with safeguards against possible adverse effects on the environment.

Utah International, Inc., 36 IBLA 219 (Aug. 8, 1978)

PATENTS

Where the primary reason for the State Office rejection of a millsite application appears to be that the Environment Protection Agency has recommended against the issuance of a patent because of possible adverse effects on the environment which the Federal Government will not be able to control if patent issues, the decision of the State Office will be reversed where the

MILLSITES--Continued

PATENTS--Continued

applicant shows that he has fulfilled the requirement of 30 U.S.C. § 42 (1970), and where the State having jurisdiction over the operation after patent issues has a strict environmental protection law with safeguards against possible adverse effects on the environment.

Utah International, Inc., 36 IBLA 219 (Aug. 8, 1978)

MINERAL LANDS

GENERALLY

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

MINERAL RESERVATION

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 et seq. (1970), was not generally intended to give the grantee the right to use the land for mineral development and mineral development was to proceed only under the mineral laws.

"Ejusdem generis." The ejusdem generis rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

Gravel in a valuable deposit is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

NONMINERAL ENTRIES

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

PROSPECTING PERMITS

Where a question arises on appeal as to the reasonableness of certain stipulations required prior to the issuance of uranium prospecting permits on lands administered by the Forest Service, the case will be remanded to allow the Forest Service and Bureau of Land Management to reexamine such stipulations.

Robert B. Schick, 34 IBLA 250 (Mar. 28, 1978)

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An application for a preference-right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

MINERAL LEASING ACT
(See also Coal Leases and Permits, Geothermal Leases, Oil and Gas Leases, Phosphate Leases and Permits, Potassium Leases and Permits, Sodium Leases and Permits--if included in this Index.)

GENERALLY

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Where an applicant for a preference-right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

The failure of an applicant for a preference-right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

Cortella Coal Corp., 35 IBLA 172 (May 23, 1978)

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

Sec. 9(b) of the Administrative Procedure Act, as amended, 5 U.S.C. § 558(c) (1976), does not apply to coal prospecting permit extension applications because the prospecting is not an "activity of a continuing nature" within the meaning of the statute. As the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 30 U.S.C. § 201 (West Supp. 1977), removed the Secretary of the Interior's discretion to grant extensions, applications for preference-right leases filed after expiration of the initial 2-year permit term, and during pendency of extension applications, cannot be issued.

Rosebud Coal Sales Co., 37 IBLA 251 (Oct. 18, 1978)
85 I.D. 396

Applications for rights-of-way for oil and gas pipelines, or amendments thereto which were pending at the time of the passage of the Trans-Alaska Pipeline Authorization Act of Nov. 16, 1973, 87 Stat. 579, amending sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), may only be granted pursuant to the provisions of that Act.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

LANDS SUBJECT TO

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1970). If drainage occurs on such lands by reason of wells drilled on adjacent lands, agreements with the owners thereof may be entered into by the Bureau of Land Management pursuant to 43 CFR 3100.3.

Hawthorn Oil Co., 37 IBLA 91 (Sept. 22, 1978)

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

The Government is not estopped from collecting royalty payments which are owed, even if it has accepted improper payments in the past.

The statute of limitations for filing claims on behalf of the Government in a Federal court need not be invoked

MINERAL LEASING ACT--Continued

ROYALTIES--Continued

in an administrative adjudicative proceeding to determine royalties due to the United States under mineral leases.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

MINERAL LEASING ACT FOR ACQUIRED LANDS

CONSENT OF AGENCY

The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Geo, Inc., 34 IBLA 27 (Feb. 14, 1978)

Where acquired lands are under the jurisdiction of the Bureau of Reclamation, its opinion as to the desirability of issuing an oil and gas lease under the Mineral Leasing Act for Acquired Lands is not controlling, although its views will be considered carefully. Rather, it is up to the Bureau of Land Management to assemble information and to determine on the Department's behalf whether such a lease may be issued.

Esdras K. Hartley, 35 IBLA 137 (May 22, 1978)

LANDS SUBJECT TO

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

MINING CLAIMS
(See also Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virg-in, 33 IBLA 354 (Jan. 18, 1978)

MINING CLAIMS--Continued

GENERALLY--Continued

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

A mining claimant must comply both with Federal law and with such State requirements as are not inconsistent with Federal mining provisions.

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

The United States and a city which has filed an application to purchase land pursuant to the Recreation and Public Purposes Act are adverse claimants who may take advantage of the failure of a mining claimant to perform annual assessment.

A classification of the lands under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970), as amended, segregates the land from all other forms of appropriation under the public land laws including the mining laws when the classification is noted on the Bureau of Land Management State Office records.

Under Arizona law a failure to perform the tasks enunciated in 27 ARS 203 within the specified time will be deemed to be an abandonment of a mining claim.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim is properly declared null and void ab initio where the land on which it is located was segregated by a formal forest exchange application, which withdrew the selected public lands from location under the mining laws prior to the time that the mineral location was made.

Charles A. Morriss, 36 IBLA 372 (Aug. 31, 1978)

MINING CLAIMS--Continued

GENERALLY--Continued

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States' mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio.

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

Pursuant to 43 CFR 2091.2-5, an application for withdrawal temporarily precludes entry on the land in derogation thereof, from the time the application is noted on the records until revocation thereof is also noted on the records, and such withdrawal is not deemed to have expired despite the fact that the withdrawal application was noted on the records 7 years prior to location of the mining claim.

A mining claim located in part on land withdrawn for a utility corridor and segregated from mineral entry is null and void ab initio as to such land.

Earl D. Woody, Hinton E. White, 38 IBLA 385 (Dec. 29, 1978)

ABANDONMENT

Under Arizona law a failure to perform the tasks enunciated in 27 ARS 203 within the specified time will be deemed to be an abandonment of a mining claim.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

W. A. Starr and Ida Elsie Botiller, 38 IBLA 74 (Nov. 9, 1978)

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

John R. Caurruthers, 38 IBLA 77 (Nov. 9, 1978)

ASSESSMENT WORK

Since a "legal impediment" which would justify the granting of a deferment to perform annual assessment work is only one which interdicts the mining claimant from access to the claim, the fact that the mining claimant is involved in a pending proceeding seeking an arrangement under Chapter XI of the Bankruptcy Act

ASSESSMENT WORK--Continued

does not constitute such an impediment. While this circumstance may prevent the claimant from expending his assets to perform assessment work, it does not restrict his access to the claim.

Oliver Reese, 34 IBLA 103 (Feb. 27, 1978)

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

The United States and a city which has filed an application to purchase land pursuant to the Recreation and Public Purposes Act are adverse claimants who may take advantage of the failure of a mining claimant to perform annual assessment.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

In order for a mining claimant to qualify for deferment of his annual assessment work under 30 U.S.C. § 28b (1970), his access to his mining claims must be interdicted. The mere fact the mining claims are involved in litigation over possessory rights does not justify granting a deferment of annual assessment work.

John W. MacGuire, 35 IBLA 117 (May 15, 1978)

A "legal impediment" which would justify the granting of a deferment to perform annual assessment work is only one which interdicts the mining claimant from access to the claim. Where there is no indication in the record that the claimant prior to the decision appealed from has attempted to make satisfactory arrangements with the surface owners covering possible surface damage or has negotiated with such owners concerning his access, his access has not been interdicted and the petition for deferment was properly denied.

A. J. Maurer, Jr., 36 IBLA 4 (June 27, 1978)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Although pending litigation with respect to ownership of mining claims does not in itself establish grounds for deferment of assessment work thereon, a court injunction against entry upon the claims by the locator constitutes a "legal impediment" to entry which will support a deferment.

Continental Oil Co., 36 IBLA 65 (June 30, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

W. A. Starr and Ida Elsie Botiller, 38 IBLA 74 (Nov. 9, 1978)

Under 43 CFR 3833.2-1(b), the owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned, under 43 CFR 3833.4(a).

John R. Caurruthers, 38 IBLA 77 (Nov. 9, 1978)

Under sec. 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), deferment of annual assessment work for mining claims may only be granted for 2 years, and a petition for deferment beyond the authorized 2-year period is properly denied.

The Dredge Corp., 38 IBLA 178 (Dec. 6, 1978)

COMMON IMPROVEMENT

Where in a patent application for a group of claims, pro rata credit for the value of a common, offsite improvement is to be attributed to each claim, it must be shown that the improvement was subseguent to the location of each claim so credited, and that the improvement is essential to the practical development and actually facilitates the extraction of ore from each claim.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS

Generally

Without evidence that obsidian similar to that found in great abundance elsewhere has a property giving it a special and distinct value, it is a common variety no longer locatable under the mining laws. The fact that obsidian may be tumbled and polished for rock hound purposes is not sufficient to meet the test of "uncommonness."

United States v. Margaret Mansfield, 35 IBLA 95 (May 15, 1978)

Whether a deposit of clay is a common variety and no longer locatable under the mining laws since the Act of July 23, 1955, or is still locatable depends on whether it has a unigue property giving it a special and distinct value.

United States v. Schneider Minerals, Inc., and Aqua Pura, Inc., 36 IBLA 194 (Aug. 3, 1978)

Common varieties of a particular mineral material do not have to be physically alike or equally desirable for a given purpose. When the evidence shows that other deposits occur commonly in the area and are similarly used, the fact that the subject deposit has qualities which are particularly well suited to that purpose does not, of itself, alter its essential character as a common variety material.

Where, prior to July 23, 1955, a deposit of the common rock of the country might have been deemed locatable as building stone because it met certain engineering specifications or requirements, if this were unknown at that time, or if its only real value prior to that date was for ordinary fill, riprap, sub-base, ballast or barrow, it cannot be treated as a valuable mineral deposit which would serve to validate a mining claim.

A deposit of what otherwise would be a common variety of mineral material cannot be regarded as uncommon on the basis that the deposit enjoys the simple economic advantage of closer proximity to the market.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

Special Value

A clay's unique properties--superior bonding characteristics, high brilliance and low impurity content--which make it particularly suitable for use in the paper coating and ceramics industries, impart a special and distinct value to the clay through the generation of profits in excess of those which could be realized from a deposit of a common variety of the material.

United States v. Schneider Minerals, Inc., and Aqua Pura, Inc., 36 IBLA 194 (Aug. 3, 1978)

Unigue Property

A clay's unique properties--superior bonding characteristics, high brilliance and low impurity content--which make it particularly suitable for use in the paper coating and ceramics industries, impart a special and distinct value to the clay through the generation of profits in excess of those which could be realized from a deposit of a common variety of the material.

United States v. Schneider Minerals, Inc., and Aqua Pura, Inc., 36 IBLA 194 (Aug. 3, 1978)

MINING CLAIMS--Continued

CONTESTS

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Andrew J. Van Derpoel, et al., 33 IBLA 248 (Jan. 5, 1978)

Where a contest complaint charges that no minerals of a variety subject to the mining laws sufficient in quality, quantity, and value to constitute a discovery are disclosed on a claim, and that the land embraced in the claim is nonmineral in character and the contestee fails to file an answer to the complaint in accordance with departmental regulations, the allegation of the complaint will be taken as admitted by the contestee and the claim is properly held null and void.

United States v. Bonda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

A millsite is used for mining or milling purposes if the use is a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lodes. Some step in or directly connected with the process of mining or some feature of milling must be performed on the millsite.

Where the evidence presented at a hearing demonstrates a lode claim to be valid, a contest against a millsite held by the owner of the lode claim will be dismissed

MINING CLAIMS--Continued

CONTESTS--Continued

if the millsite is being used or occupied for mining or milling purposes.

United States v. John R. Parsons, 33 IBLA 326 (Jan. 16, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

United States of America v. David L. King, et al., 34 IBLA 15 (Feb. 10, 1978)

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Clark J. Guild, et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

United States v. Brent J. Brunker, 36 IBLA 36 (June 27, 1978)

The Department of the Interior is lawfully empowered to initiate a contest pursuant to the Administrative Procedure Act to determine the validity of unpatented mining claims. This procedure makes no provision for 1) trial by jury, 2) advice to the contestant concerning his constitutional rights, 3) compensation to the contestant for the value of the claim if it is found to be invalid, or 4) appointment by the Department of qualified counsel to represent the contestant; and this procedure does not violate constitutional guarantees of due process, the General Mining Law, or the Administrative Procedure Act. Presentation of the contestant's case by counsel employed by the Forest Service in appropriate cases is permissible, and Federal employees may testify as witnesses, and may conduct examinations

MINING CLAIMS--Continued

CONTESTS--Continued

and secure mineral samples on unpatented mining claims without a search warrant.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Where the claimant presents evidence of returns which are so meager that they will not attract the labor and means of a person of ordinary prudence, he has failed to prove by a preponderance of the evidence that his claim is valid, and it is properly declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

This Department has authority and jurisdiction to contest mining claims on the ground that they are invalid for lack of a discovery of a valuable mineral deposit, regardless of whether any other use of the land is being made or sought. The motivation of the Forest Service in instigating a contest is irrelevant.

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

When the Government contests a mining claim on a charge of lack of discovery, of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

Where a contestee in a mining claim contest declares, of his own volition, that he does not want the claim and wishes to withdraw his answer and admit the allegations in the contest complaint, and subsequently volunteers to, and does, sign a written relinquishment of his interests in the contested claims, his claims are properly declared null and void.

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Wesley C. Miles, Sr., 36 IBLA 213 (Aug. 3, 1978)

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

United States v. Larry Joseph Timm, 36 IBLA 316 (Aug. 23, 1978)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

Where contestee has not produced substantial evidence in respect to quantity of iron oxide ore existing on claims, or in respect to whether ore can be extracted and marketed at profit, contestee has not proved that person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing valuable mine.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found evidence of mineralization insufficient to support a finding of a discovery.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Where unpatented mining claims were located some 50 years before the claimant filed application for patent, during which time they went unchallenged by the Government, the United States is not barred from contesting the validity of the claims by invocation of the equitable defense of laches.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

MINING CLAIMS--Continued

CONTESTS--Continued

Where national forest land is open to mineral location, the failure of a district forest ranger to object to the location or development of mining claims for a number of years, or to request that a contest of the validity of the claims be initiated, does not estop the United States from bringing a contest, nor is the contest barred by laches.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

When the Government contests a mining claim on a charge of no discovery it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants.

United States v. Loren E. Burns, et al., 38 IBLA 97 (Nov. 20, 1978)

Once the Government has established a prima facie case that no discovery of a valuable mineral deposit has been made within a mining claim, the burden of proof shifts to the contestee to establish by a preponderance of the evidence the existence of a discovery.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

DETERMINATION OF VALIDITY

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Andrew J. Van Derpoel, et al., 33 IBLA 248 (Jan. 5, 1978)

Where a contest complaint charges that no minerals of a variety subject to the mining laws sufficient in quality, quantity, and value to constitute a discovery are disclosed on a claim, and that the land embraced in the claim is nonmineral in character and the contestee fails to file an answer to the complaint in accordance with departmental regulations, the allegation of the complaint will be taken as admitted by the contestee and the claim is properly held null and void.

United States v. Bonda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

Ray L. Virg-in, 33 IBLA 354 (Jan. 18, 1978)

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

Irwin W. Sweeney, 34 IBLA 205 (Mar. 23, 1978)

A mining claimant must comply both with Federal law and with such State requirements as are not inconsistent with Federal mining provisions.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or very nearly the same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. § 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

G. Antolini & Son, 37 IBLA 13 (Sept. 8, 1978)

William E. Rhodes, 38 IBLA 127 (Nov. 22, 1978)

To constitute a discovery on a mining claim, there must be shown to exist minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a profitable mine.

A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found evidence of mineralization insufficient to support a finding of a discovery.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

Although in certain circumstances a rebuttable presumption of a mining claim's validity may be indulged, the presumption does not arise to support an application for patent of the fee title. The patent applicant is the movant party, and as such it is his obligation to make a satisfactory showing of his entitlement under the law and regulations.

Where a mineral patent application is supported by information sufficient to permit a mineral examination of the claims, but not sufficient for the adjudicator to approve the application for patent, he may properly call on the applicant for supplemental evidence to support the application. However, if the claimant fails to submit it, the adjudicator may not penalize such failure by summary rejection of the application for

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

reasons relating to disputed issues of fact without notice and an opportunity for hearing.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

Testimony that a mining claim could not presently be mined economically but may have economic potential and warrants further exploration work is insufficient to satisfy the prudent man test and meet the claimants' burden.

United States v. Loren E. Burns, et al., 38 IBLA 97 (Nov. 20, 1978)

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

Once the Government has established a prima facie case that no discovery of a valuable mineral deposit has been made within a mining claim, the burden of proof shifts to the contestee to establish by a preponderance of the evidence the existence of a discovery.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

DISCOVERY

Generally

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

been made and still exists within the limits of the claim.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

Andrew J. Van Derpoel, et al., 33 IBLA 248 (Jan. 5, 1978)

A discovery of a valuable mineral deposit is not made unless minerals have been found on a claim, the evidence of them is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, and the deposit may be perceived by a prudent man as susceptible to extraction, removal and marketing at a reasonable profit.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

A valuable discovery of a mineral deposit is established where a claimant, by a preponderance of the evidence, establishes the presence of mineralization which would justify a prudent man in expending his labor, time, and money on the claim with an expectation of developing a valuable mine.

United States of America v. David L. King, et al., 34 IBLA 15 (Feb. 10, 1978)

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

A Government mineral examiner has no duty to explore beyond the claimant's current workings to verify a mineral discovery.

To establish a discovery, a claimant must show more than that a prudent man would explore the claim further. The claimant must show that a valuable mineral deposit has been physically exposed, and may not rely on the mere speculation that a valuable deposit will be exposed somewhere on the claim.

To satisfy the prudent man test, it must be shown that the expected returns from working a mining claim are commensurate with the compensation an ordinary person would expect from his labor. The subjective willingness of a claimant to subsist on a substandard income in order to work the claim does not satisfy the test

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

where the claimant received welfare payments and grew his own food in order to snrvive.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

A lode mining claim is properly declared null and void in the absence of a showing of a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man to further expend his labor and means in the reasonable expectation of developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Estate of W. R. Wood, 34 IBLA 44 (Feb. 16, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been fonnd and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the bnrden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Clark J. Guild, et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the fnrther expenditure of his labor and means with a reasonable prospect of snccess in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either throngh exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery exists only where minerals have been found in quantities such that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable expectation of developing a valuable mine.

When the Government through the testimony of an expert mineral examiner has alleged a lack of valuable mineralization, the burden of showing the contrary by a preponderance of the evidence shifts to the contestees.

Isolated showings of high sample values and assays will not, without more, support a claim of discovery.

United States v. Richard H. Kingdon and Edith P. Kingdon, 36 IBLA 11 (June 27, 1978)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Where the claimant presents evidence of returns which are so meager that they will not attract the labor and means of a person of ordinary prudence, he has failed to prove by a preponderance of the evidence that his claim is valid, and it is properly declared null and void.

United States v. Joseph Larsen and Ferris Larsen, 36 IBLA 130 (July 25, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

This Department has authority and jurisdiction to contest mining claims on the ground that they are invalid for lack of a discovery of a valuable mineral deposit, regardless of whether any other use of the land is being made or sought. The motivation of the Forest Service in instigating a contest is irrelevant.

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery, of a valuable mineral deposit, it

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of validity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

A discovery of a valuable mineral deposit is not made unless minerals have been found on a claim, the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, and the deposit may be perceived by a prudent man as susceptible to extraction, removal and marketing at a reasonable profit.

United States v. Wesley C. Miles, Sr., 36 IBLA 213 (Aug. 3, 1978)

In a mining claim contest, no weight will be given to claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery had been made.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current workings of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

United States v. Larry Joseph Timm, 36 IBLA 316 (Aug. 23, 1978)

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Where contestee has not produced substantial evidence in respect to quantity of iron oxide ore existing on claims, or in respect to whether ore can be extracted and marketed at profit, contestee has not proved that person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing valuable mine.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

To constitute a discovery on a mining claim, there must be shown to exist minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a profitable mine.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery and is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

A discovery exists only where minerals have been found in such quantities that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable expectation of developing a valuable mine.

When the Government through the testimony of an expert mineral examiner has alleged a lack of valuable mineralization, the burden of showing the contrary by a preponderance of the evidence shifts to the contestees.

The value of common varieties of sand and gravel not locatable under the mining laws cannot be considered in the evaluation of the value of placer gold to determine whether there has been a discovery of a valuable deposit of gold on a contested mining claim, where it is clear that the mineral claimants made no discovery of a valuable mineral deposit prior to July 23, 1955.

United States v. Gaylord Lambeth, et al., 37 IBLA 107 (Sept. 29, 1978)

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

It is incumbent upon the mining claimant, not the Government's mineral examiner, to do that amount of work which is necessary to discovery a valuable mineral deposit.

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

A discovery of a valuable mineral deposit has been made where minerals have been found in sufficient quantity and quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Testimony that a mining claim could not presently be mined economically but may have economic potential and warrants further exploration work is insufficient to satisfy the prudent man test and meet the claimants' burden.

United States v. Loren E. Burns, et al., 38 IBLA 97 (Nov. 20, 1978)

The Government is entitled to determine whether a valuable mineral deposit exists on a mining claim, in order to decide whether to initiate a contest complaint challenging the validity of the claim, prior to the completion of mineral exploration by the mining claimant.

United States v. Lost Polack Mining Assoc., 38 IBLA 101 (Nov. 20, 1978)

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

A discovery exists only where minerals have been found in quantities such that a person of ordinary prudence would be justified in the further expenditure of his labor and means with the reasonable expectation of developing a valuable mine.

A prudent man would be justified in expending his labor and means in developing an unpatented mining claim only where it appears that the mineralization on the claim in question is valuable enough to yield a fair market value in excess of the costs of its extraction, removal, and sale.

When the Government through the testimony of an expert mineral examiner has alleged a lack of valuable mineralization, the burden of showing the contrary by a preponderance of the evidence shifts to the contestees.

Isolated showings of high assay values will not suffice to establish a discovery, especially where the claimants have attempted little or no development of the alleged mineral discovery.

The sale of decorative building stone from the surface of a lode mining claim cannot support a claimant's contention that a valuable mineral discovery has been made on such lode claim, decorative stone being locatable only under the provisions of the placer mining laws,

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

30 U.S.C. § 161 (1976), and only where such stone is shown to be an "uncommon variety" within the meaning of 30 U.S.C. § 611 (1976).

United States v. Frank and Wanita Melluzzo, 38 IBLA 214 (Dec. 7, 1978) 85 I.D. 441

Marketability

Establishing the marketability of a mineral deposit requires more than a showing that the mineral is theoretically marketable or intrinsically valuable. The claimant must demonstrate present continuing demand for the output of his mine.

It is not sufficient to show that attempts are being made to explore possible markets or to promote the utilization of the mineral. Past sporadic sales do not establish a market.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

In order to demonstrate a discovery of a valuable mineral, one must prove by a preponderance of the evidence the presence of minerals that would justify a prudent man in the expenditure of his labor and means with the reasonable prospect of success in developing a paying mine.

A mineral claimant whose claim embraces deposits of both common and uncommon varieties of minerals cannot aggregate the profits returned from mining the common variety and those netted from mining the uncommon variety to show marketability.

United States v. Margaret Mansfield, 35 IBLA 95 (May 15, 1978)

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or very nearly the same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Where contestee has not produced substantial evidence in respect to quantity of iron oxide ore existing on claims, or in respect to whether ore can be extracted and marketed at profit, contestee has not proved that person of ordinary prudence would be justified in further expenditure of his labor and means, with reasonable prospect of success, in developing valuable mine.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

mining laws and was not locatable prior to July 23, 1955.

United States v. Verdugo & Miller, Inc., 37 IBLA 277 (Oct. 20, 1978)

HEARINGS

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

Andrew J. Van Derpoel, et al., 33 IBLA 248 (Jan. 5, 1978)

United States v. Clark J. Guild, et al., 34 IBLA 387 (May 3, 1978)

United States v. Don Lee Seto and Pauline Seto, 35 IBLA 4 (May 3, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

United States of America v. David L. King, et al., 34 IBLA 15 (Feb. 10, 1978)

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence could be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an administrative law judge's decision declaring the claim null and void will be affirmed.

United States v. Thelma O. Crismon, 34 IBLA 381 (May 2, 1978)

MINING CLAIMS--Continued

HEARINGS--Continued

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

James Messano, 35 IBLA 383 (June 23, 1978)

The Government has established a prima facie case of nondiscovery when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Catherine E. Gay, 36 IBLA 148 (July 31, 1978)

Evidentiary submissions on appeal can be considered only for the limited purpose of determining whether a further hearing should be granted. The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

There is not a sufficient equitable basis for reopening a hearing in a mining contest because of an alleged fire to the contestee's home 3 days before the scheduled hearing where neither she nor her attorney who had entered an appearance in the case requested a postponement of the hearing or a continuation of the hearing after it had been held. Also, a further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery of a valuable mineral deposit.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

A second hearing will not be afforded generally where a claimant was given notice and an opportunity to appear at a hearing, where he did appear and was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

MINING CLAIMS--Continued

HEARINGS--Continued

The Government has established a prima facie case of a lack of discovery, thus shifting the burden of proving a discovery onto the mining claimant, when an expert witness testifies that he has examined the claim and has found the mineral values insufficient to support a finding of discovery.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

A second hearing will not be afforded where a mining claimant has submitted nothing which suggests that another hearing would produce a different result, i.e., a finding that a valuable mineral deposit has been discovered on a mining claim. Assertions that further mineral examination would prove the existence of such a deposit and that such a deposit exists on adjacent land, without more, do not entitle the claimant to another hearing.

United States v. Lost Polack Mining Assoc., 38 IBLA 101 (Nov. 20, 1978)

LANDS SUBJECT TO

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

Ray L. Virg-in, 33 IBLA 354 (Jan. 18, 1978)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Janelle R. Deeter, Gary B. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner, et al., 34 IBLA 179 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Edward L. Macauley, Martha D. Macauley, 35 IBLA 202 (May 24, 1978)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

James Messano, 35 IBLA 383 (June 23, 1978)

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Victor A. G. Schmidt, 36 IBLA 394 (Sept. 5, 1978)

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States' mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio.

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

Patented lands which are subsequently acquired by the United States for the National Park Service are not, by mere force of acquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws. 30 U.S.C. § 22 (1970).

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Lands withdrawn for a power site reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

Edward T. Dwyer, 38 IBLA 144 (Nov. 30, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

J. R. Nesmith, 38 IBLA 357 (Dec. 22, 1978)

Pursuant to 43 CFR 2091.2-5, an application for withdrawal temporarily precludes entry on the land in derogation thereof, from the time the application is noted on the records until revocation thereof is also noted on the records, and such withdrawal is not deemed to have expired despite the fact that the withdrawal application was noted on the records 7 years prior to location of the mining claim.

A mining claim located in part on land withdrawn for a utility corridor and segregated from mineral entry is null and void ab initio as to such land.

Earl D. Woody, Hinton E. White, 38 IBLA 385 (Dec. 29, 1978)

LOCATABILITY OF MINERAL

Leasable Compounds

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products"

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Leasable Compounds--Continued

along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

LOCATION

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

No location of a placer mining claim on Federal lands may include more than 20 acres for each individual claimant.

United States of America v. David L. King, et al., 34 IBLA 15 (Feb. 10, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

MINING CLAIMS--Continued

LOCATION--Continued

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

No location of a placer mining claim may include more than 20 acres for each individual claimant. Where claims in excess of 20 acres are located by an association of locators and there is no evidence of a qualifying discovery of minerals prior to the claim's conveyance to a single individual, the claim is void, and any subsequent discovery will serve only to validate a claim of 20 acres.

Where a mining claimant alters the legal description in the location notice for his "Claim A," so that it now describes land previously embraced by a portion of his "Claim B," which was void ab initio as a matter of law, the alteration of "Claim A" must be considered a relocation rather than an amendment.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

MARKETABILITY

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

MILLSITES

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

A millsite is used for mining or milling purposes if the use is a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lodes. Some step in or directly connected with the process of mining or some feature of milling must be performed on the millsite.

Where the evidence presented at a hearing demonstrates a lode claim to be valid, a contest against a millsite held by the owner of the lode claim will be dismissed

MINING CLAIMS--Continued

MILLSITES--Continued

if the millsite is being used or occupied for mining or milling purposes.

United States v. John R. Parsons, 33 IBLA 326 (Jan. 16, 1978)

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1970), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Ray Paden, 33 IBLA 380 (Jan. 25, 1978)

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

MINERAL SURVEYS

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

PATENT

A single application for patent under the mining laws may not include noncontiguous placer mining claims.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308 (Jan. 10, 1978)

Although in certain circumstances a rebuttable presumption of a mining claim's validity may be indulged, the presumption does not arise to support an application for patent of the fee title. The patent applicant is the movant party, and as such it is his obligation to make a satisfactory showing of his entitlement under the law and regulations.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

PATENT IMPROVEMENTS

Where in a patent application for a group of claims, pro rata credit for the value of a common, offsite improvement is to be attributed to each claim, it must be shown that the improvement was subsequent to the location of each claim so credited, and that the improvement is essential to the practical development and actually facilitates the extraction of ore from each claim.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

MINING CLAIMS--Continued

PLACER CLAIMS

A single application for patent under the mining laws may not include noncontiguous placer mining claims.

Charles House, Mrs. Leonard Skinner, 33 IBLA 308 (Jan. 10, 1978)

No location of a placer mining claim on Federal lands may include more than 20 acres for each individual claimant.

United States of America v. David L. King, et al., 34 IBLA 15 (Feb. 10, 1978)

No location of a placer mining claim may include more than 20 acres for each individual claimant. Where claims in excess of 20 acres are located by an association of locators and there is no evidence of a qualifying discovery of minerals prior to the claim's conveyance to a single individual, the claim is void, and any subsequent discovery will serve only to validate a claim of 20 acres.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

POSSESSORY RIGHT

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Where a corporate patent applicant can trace its ownership of the claim back through a series of conveyances to a mesne owner who had title to the claim quieted in her by the decree of a court of competent jurisdiction, there is no need to look behind the quiet title decree to an earlier break in the chain of title unless there is reason to believe that the interest which is unaccounted for was not disposed of by the litigation. However, a court decree which merely distributes the assets of a decedent's estate is not a "quiet title decree" in this context, and does not ordinarily foreclose the interests of third parties who hold the record title to mining claims.

Before a claimant may successfully invoke 30 U.S.C. § 38 (1976) to cure deficiencies in the method of location of, or title to mining claims, it must first be established that each of the claims is supported by a discovery of a valuable deposit of mineral, and that claimant and/or predecessors have "held and worked" each of the claims for the requisite period. Where these showings are disputed, notice and opportunity for a hearing must be afforded.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

MINING CLAIMS--Continued

POWER SITE LANDS

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner, et al., 34 IBLA 179 (Mar. 14, 1978)

The preservation of important and critical habitats for wildlife is a use warranting the prohibition of mining from an area in accordance with the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1970); however, where the only use shown on eight mining claims is likely destruction of a dove nesting and breeding habitat which has produced only approximately .11 of 1 percent of the 1976 total hunters' kill of over 2-1/2 million doves in the State of Arizona and there is insufficient evidence to establish that the habitat is a critical and important habitat for the doves, an administrative law judge's decision to allow placer mining operations will be affirmed.

United States v. Mineral Economics Corp., 34 IBLA 258 (Mar. 30, 1978)

Lands withdrawn for a power site reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

RECORDATION

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

The failure of a mining claimant to file the notice of recordation required by sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977), cannot be excused on the basis of equitable estoppel where no discussion covering the 90-day requirement was had between the Department and appellant's representatives.

Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (Jan. 16, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations.

Failure to record mining claims in accordance with sec. 314 of the Federal Land Policy and Management Act of 1976 is deemed conclusively to constitute abandonment of the claims. Filing the recordation documents in a Bureau of Land Management District Office, rather than in the proper State Office, the day before the expiration of the 90-day statutory deadline for recordation

MINING CLAIMS--Continued

RECORDATION--Continued

does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordations upon receipt of the documents after the 90-day deadline had passed.

Irwin W. Sweeney, 34 IBLA 205 (Mar. 23, 1978)

Pursuant to sec. 314(b) of the Federal Land Policy and Management Act of 1976, a copy of the official record of the notice of location of a mining claim must be filed within 90 days after location of the claim. In computing this period the date of location is not counted but the last day of the period is. Thus, when a claim is located on Sept. 1, 1977, a notice filed on Dec. 1, 1977, is 1 day late, Nov. 30, 1977, being the 90th day.

Robert Thompson, 34 IBLA 319 (Apr. 24, 1978)

In order for a mining claimant to maintain a possessory right in a claim under Arizona law, the locator must file within 90 days a copy of the location notice in the county in which the claim is located.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

"Date of location." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded at the office of the Bureau of Land Management designated by the Secretary of the Interior, within 90 days after the date of location. By regulation the BLM State Offices are designated the proper offices for mining claim recordations each within its area of jurisdiction. BLM State Offices properly refuse to record notices of location of mining claims not received by the proper BLM State Office before the end of the 90-day period set by statute.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, mining claims located after Oct. 21, 1976, must be recorded in the proper office of the Bureau of Land Management within 90 days from the date of location, not within 90 days from the date the claims were recorded under State law. BLM properly refuses to accept for recordation notices of location filed after the 90-day period.

Foyle Mason, 35 IBLA 40 (May 8, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by State law.

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one

MINING CLAIMS--Continued

RECORDATION--Continued

does not satisfy the requirement that the other be filed.

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

Paul S. Coupey, 35 IBLA 112 (May 15, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. $ 1744(b) (West Supp. 1977), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

R. Wade Holder, et al., 35 IBLA 169 (May 22, 1978)

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

Ronald L. Nordwick, 36 IBLA 238 (Aug. 14, 1978)

Where certificates of location as to mining claims have not been filed (received and date stamped) at the proper Bureau of Land Management office within 90 days of the date of location, as required by the regulation, 43 CFR 3833.1-2(b), for claims located after Oct. 21, 1976, the Bureau must refuse to accept the certificates and declare the claims to be null and void.

Neither the Federal Land Policy and Management Act of 1976 nor the applicable regulations make provision for relief where the death of an employee instructed to file certificates of location for the mining claims of his employer, as required by 43 CFR 3833.1-2(b), causes the filing to be more than 90 days after the date of location of the claims.

E. M. Koppen, 36 IBLA 379 (Aug. 31, 1978)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. $ 1744 (Supp. 1978), unless the required copy of the official record of location is filed in the proper BLM office within

MINING CLAIMS--Continued

RECORDATION--Continued

90 days from the date of location, a mining claim located after Oct. 21, 1976, is void, and any later filing of the notice is invalid.

G. Antolini & Son, 37 IBLA 13 (Sept. 8, 1978)

William E. Rhodes, 38 IBLA 127 (Nov. 22, 1978)

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. $ 1744(b) (1976), and 43 CFR 3833.1-2, the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, shall, within 90 days after the date of location of such claim, file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

James F. Giancarlo, 37 IBLA 88 (Sept. 22, 1978)

Leland H. Bray, 37 IBLA 120 (Oct. 3, 1978)

Department of the Interior, as agency of executive branch of Government, is not proper forum to decide whether or not statute enacted by Congress is constitutional.

Appellant's prior filings of mining claim documents with BLM do not relieve him of filing obligations imposed by sec. 314 of Federal Land Policy and Management Act and implementing regulations at 43 CFR Subpart 3833, which are binding.

Al Sherman, 38 IBLA 300 (Dec. 14, 1978)

RELOCATION

Where a mining claimant alters the legal description in the location notice for his "Claim A," so that it now describes land previously embraced by a portion of his "Claim B," which was void ab initio as a matter of law, the alteration of "Claim A" must be considered a relocation rather than an amendment.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

Edward T. Dwyer, 38 IBLA 144 (Nov. 30, 1978)

SPECIAL ACTS

An application under the Act of Apr. 23, 1932, 43 U.S.C. $ 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

MINING CLAIMS--Continued

SPECIAL ACTS--Continued

The holder of a mining claim located within the Papago Indian Reservation under sec. 3 of the Act of June 18, 1934, 48 Stat. 984 (repealed, Act of May 27, 1955, 69 Stat. 67), is required to make the annual rental payment for the claim in advance (on or before the anniversary date of location of the claim). A decision invalidating a claim will be upheld where proceedings to void the claim are not initiated until several months after the rental due date, there is no evidence the rent was paid for the year, and appellant admits the failure to pay was an oversight.

John A. Cooley, 36 IBLA 245 (Aug. 14, 1978)

Before a claimant may successfully invoke 30 U.S.C. § 38 (1976) to cure deficiencies in the method of location of, or title to mining claims, it must first be established that each of the claims is supported by a discovery of a valuable deposit of mineral, and that claimant and/or predecessors have "held and worked" each of the claims for the requisite period. Where these showings are disputed, notice and opportunity for a hearing must be afforded.

Brattain Contractors, Inc., 37 IBLA 233 (Oct. 18, 1978)

SPECIFIC MINERAL(S) INVOLVED

Generally

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

Gold

The "marketability test"--i.e., to qualify as a valuable mineral deposit, the mineral deposit must be extractable, removable and marketable at a profit--is a complement to the "prudent man rule." The fact that a mineral such as gold possesses intrinsic value does not prevent the application of the marketability test to determine whether the deposit of such a mineral constitutes a discovery of a valuable mineral deposit under the mining laws.

United States v. Jack C. Harris, Jill L. Harris, 38 IBLA 137 (Nov. 29, 1978)

SURFACE USES

The location of a mining claim simply to maintain a road and insure access to other claims beyond is not a legitimate purpose within the scope or intention of the general mining law.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

MINING CLAIMS--Continued

WITHDRAWN LAND

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virg-in, 33 IBLA 354 (Jan. 18, 1978)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Janelle R. Deeter, Gary B. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

A mining claim located on land in Alaska at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Sally Lester, et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Edward L. Macauley, Martha D. Macauley, 35 IBLA 202 (May 24, 1978)

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

Mining claims located on land withdrawn from such entry are null and void ab initio and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

James Messano, 35 IBLA 383 (June 23, 1978)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

A mining claim is properly declared null and void ab initio where the land on which it is located was segregated by a formal forest exchange application, which withdrew the selected public lands from location under the mining laws prior to the time that the mineral location was made.

Charles A. Morriss, 36 IBLA 372 (Aug. 31, 1978)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Victor A. G. Schmidt, 36 IBLA 394 (Sept. 5, 1978)

Lands withdrawn for a power site reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

Edward T. Dwyer, 38 IBLA 144 (Nov. 30, 1978)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

J. R. Nesmith, 38 IBLA 357 (Dec. 22, 1978)

MINING CLAIMS RIGHTS RESTORATION ACT

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner, et al., 34 IBLA 179 (Mar. 14, 1978)

The preservation of important and critical habitats for wildlife is a use warranting the prohibition of mining from an area in accordance with the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1970); however, where the only use shown on eight mining claims is likely destruction of a dove nesting and breeding habitat which has produced only approximately .11 of 1 percent of the 1976 total hunters' kill of over 2-1/2 million doves in the State of Arizona and there is insufficient evidence to establish that the habitat is a critical and important habitat for the doves, an administrative law judge's decision to allow placer mining operations will be affirmed.

United States v. Mineral Economics Corp., 34 IBLA 258 (Mar. 30, 1978)

Lands withdrawn for a power site reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

MINING OCCUPANCY ACT

GENERALLY

Occupancy of a cabin which is not physically located within the boundaries of a relinquished mining claim cannot serve as a basis for the conveyance of land under the Act of Oct. 23, 1962.

Vera Rossman, 36 IBLA 93 (July 12, 1978)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE

A cabin which is used for only a short period of time each year, primarily during the summer months, does not constitute "a principal place of residence" within the meaning of sec. 2 of the Act of Oct. 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

Vera Rossman, 36 IBLA 93 (July 12, 1978)

MISTAKES

GENERALLY

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

GENERALLY

The Bureau of Land Management may require the execution of special stipulations, including a no-surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Robert L. Healy, 35 IBLA 66 (May 12, 1978)

A stipulation prohibiting drilling and storage of oil on a portion of an oil and gas lease of 160 acres in order to protect an area of a river which is in a study section of the Wild and Scenic Rivers Act is reasonable, without consideration of other factors, where it leaves three-quarters of the lease open to regular activity.

Duncan Miller, 35 IBLA 108 (May 15, 1978)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

GENERALLY--Continued

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

NATIONAL PARK SERVICE AREAS

GENERALLY

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

Tom Brown, 37 IBLA 381 (Nov. 6, 1978)

NOTICE

GENERALLY

30 U.S.C. § 188(b)(1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Where the Bureau of Land Management notifies an oil and gas lessee of a deficiency in initial rental and the deficiency is not paid to the Bureau within the time prescribed, but is paid some 5 months later, the delay being ascribed to "oversight" the lateness of the payment will not be excused and the cancellation of the lease for failure to pay the rental timely is properly sustained.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

A mining claimant required by the Federal Land Policy and Management Act of 1976 and its implementing regulations to file a notice of location with the Bureau of Land Management, may not justify a late filing by the Bureau of Land Management's failure timely to notify the claimant of the requirement.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

NOTICE--Continued

GENERALLY--Continued

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

Service by registered or certified mail may be proved by a post office return receipt showing that the document was delivered to the person's record address. The receipt need not be signed necessarily by the person to whom the mail was addressed.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

Where BLM sends by certified mail a notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental is due within 15 days of receipt of the notice, and the letter is returned to BLM marked "moved left no address" by the post office, and it is established that the nondelivery by the post office was erroneous, the rejection of the lease offer will be set aside and the notice will not be considered to have been served on the offeror pursuant to 43 CFR 1810.2(b).

Joan L. Harris and Jonathan T. Ames, 37 IBLA 96 (Sept. 25, 1978)

COURTESY NOTICE

A mining claimant required by the Federal Land Policy and Management Act of 1976 and its implementing regulations to file a notice of location with the Bureau of Land Management, may not justify a late filing by the Bureau of Land Management's failure timely to notify the claimant of the requirement.

Belton E. Hall, 33 IBLA 349 (Jan. 18, 1978)

OATHS

Under 43 CFR 1821.3-1, information submitted by an oil and gas offeror pursuant to a request by BLM need not be made by affidavit under oath.

Duncan Miller, 38 IBLA 154 (Dec. 5, 1978)

OIL AND GAS LEASES

GENERALLY

30 U.S.C. § 188(b)(1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates

OIL AND GAS LEASES--Continued

GENERALLY--Continued

of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

N L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes and regulations, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 34 IBLA 322 (Apr. 24, 1978)

An offer to lease for oil and gas is properly rejected where payment for the first year's advance rental is not received in the appropriate office of the Bureau of Land Management within 15 days after a Notice of Rental Due is received by the offeror pursuant to 43 CFR 3112.4-1.

Susan Dawson, 35 IBLA 123 (May 15, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 35 IBLA 198 (May 24, 1978)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The boundary of an oil and gas lease covering lands riparian to a navigable river is the meander line indicated on the official plat of survey and not the waterline. Thus, lands accreted to the leased lands may be separately leased.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

An oil and gas lease is "issued" on the day it is signed by the authorized officer of the Department of the Interior, although it is not effective, per 43 CFR 3110.1-2, until the first day of the month following its date of issuance.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a pro tanto cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978) 85 I.D. 347

Noncompetitive oil and gas leases are issued for primary terms of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

D. L. Percell, 37 IBLA 272 (Oct. 20, 1978)

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

The use of a post office box number as an address is not barred by the oil and gas leasing regulations governing applications or by the Rules of Practice of the Department.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

ACQUIRED LANDS LEASES

The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Geo, Inc., 34 IBLA 27 (Feb. 14, 1978)

Regulations in force prior to Oct. 28, 1976, prohibited, in the absence of extraordinary circumstances, the issuance of oil and gas leases for fractional interests to one who would own less than 50 percent of operating rights in the leased property. The later determination that such a policy may not in general serve the public interest and the expression of the new policy in a revised regulation does not constitute an extraordinary circumstance.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Where acquired lands are under the jurisdiction of the Bureau of Reclamation, its opinion as to the desirability of issuing an oil and gas lease under the Mineral Leasing Act for Acquired Lands is not controlling, although its views will be considered carefully. Rather, it is up to the Bureau of Land Management to assemble information and to determine on the Department's behalf whether such a lease may be issued.

Where the Bureau of Land Management adopts the views of the Bureau of Reclamation, recommending rejection of an oil and gas lease offer for acquired lands within a wildlife area, without making an independent evaluation of the compatibility of oil and gas leasing with the intended function of the lands and without considering the feasibility of issuing the lease with appropriate protective stipulations, the matter is properly remanded to BLM for such independent evaluation and consideration, during which time the offeror may submit proposals for protective stipulations.

Esdras K. Hartley, 35 IBLA 137 (May 22, 1978)

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are filed.

Where an oil and gas lease offer for acquired lands is filed for less than the entire tract acquired by the United States, the regulations in 43 CFR 3102.2-3(b)(1) require that the application must describe the land by

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

Robert N. Enfield, 36 IBLA 383 (Aug. 31, 1978)

APPLICATIONS

Generally

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Charles P. Ricci, 33 IBLA 288 (Jan. 5, 1978)

Land included within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available as prescribed by 43 CFR subpart 3112.

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a serial number of a record in which such statement had previously been filed, as required by 43 CFR 3102.4-1.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed. Where a corporation submits a drawing card which is not signed by a corporate officer whose authority to sign is established by the procedure set out in 43 CFR 3102.4-1, the card is not "signed" within the meaning of 43 CFR 3112.2-1(a), and its offer must accordingly be rejected. Placing the corporation's name in script on the signature line does not constitute "signing" the card.

Anchors and Holes, Inc., 33 IBLA 339 (Jan. 16, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

Virginia A. Rapozo, 33 IBLA 344 (Jan. 18, 1978)

Patricia P. Marks, 34 IBLA 384 (May 2, 1978)

Where an inquiry by BLM discloses that an oil and gas lease applicant personally signed his name on his drawing entry card, there can be no question of the application of 43 CFR 3102.6-1(a), since this regulation operates only where an agent or attorney in fact signs the card on his principal's behalf.

An oil and gas drawing entry card may not be rejected merely because it is signed by the applicant before the parcel number is entered on it by another.

Adam F. Zbilski, 34 IBLA 4 (Feb. 8, 1978)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not signed by the offeror.

Adobe Oil and Gas Corp., 34 IBLA 13 (Feb. 10, 1978)

Regulation 43 CFR 3108.2-1(c)(3), which provides that a new lease for lands covered by a lease terminated automatically for nonpayment of rental shall not be issued until 90 days from the date of termination does not preclude posting such lands to Notice of Lands Available to Oil and Gas Leasing, 43 CFR 3112.1-2, during the 90-day period.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, including insertion of a current date, all else being regular, does not call into play other requirements of pertinent regulations.

Kenneth Ross, 34 IBLA 61 (Feb. 16, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

N L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Henry A. Alker, 34 IBLA 136 (Mar. 8, 1978)

A requirement to submit a "certified copy" of a private agreement is satisfied by the submission of a copy of the agreement with a statement that it is a copy of that agreement.

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by a State Office to submit a copy of any agreement he may have with another person, submits a copy of an agreement which incorporates, by reference, a brochure issued by the leasing service with which he had an agreement, but not a copy of the brochure, he has not complied with the directive and his offer is properly rejected.

Ricky L. Gifford, 34 IBLA 160 (Mar. 10, 1978)

Where it is shown that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of the filing fee.

Charles P. Ricci (On Reconsideration), 34 IBLA 186 (Mar. 21, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined by this Department to create an interest in the lease for the service, and the service files a waiver of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the waiver is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

Strict compliance with 43 CFR 3112.2-1, which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent, is required. Where no date of signing appears on an entry card, the offer is properly rejected.

Jack L. Macdowell, 34 IBLA 202 (Mar. 22, 1978)

John G. Keane, 37 IBLA 364 (Nov. 2, 1978)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

William R. Boehm, 34 IBLA 216 (Mar. 27, 1978)

A regulation, amended in a manner that benefits a pending application for an oil and gas lease, may be applied to the pending application in the absence of intervening rights or public interest.

Repeal of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property gives priority to an otherwise regular offer which would have had to be rejected under the former regulations, as of the effective date of the repeal, provided that no offers qualified under the former regulation have been received prior to repeal, and that the offer has not been rejected prior to repeal.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An entry card in a simultaneous oil and gas lease drawing need not be rejected where the card sets out in the parcel designation the complete name of the State in which the parcel is located instead of the abbreviation of the State name used as the State code prefix. All else being regular, such an entry card is fully executed.

Clayton Chessman, 34 IBLA 263 (Mar. 31, 1978)

Douglas Steele, 34 IBLA 344 (Apr. 26, 1978)

J. C. Davis, 35 IBLA 92 (May 12, 1978)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them, or they should not be interpreted to deprive him of a preference right to a lease.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by the applicant, and when the State prefix to the parcel number is omitted, the lease offer is properly rejected.

Richard Wheeler, Jr., 34 IBLA 359 (May 1, 1978)

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

John H. McGann, 35 IBLA 32 (May 8, 1978)

Offeror's failure to enter postal zip code of his address on entry card for simultaneous oil and gas lease drawing properly results in BLM's rejecting his offer. Such omission contradicts requirement in 43 CFR 3112.2-1(a) that entry card be "fully executed."

William K. DuKate, 35 IBLA 51 (May 9, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Tipperary Oil and Gas Corp., 35 IBLA 120 (May 15, 1978)

Where a successful drawee in a simultaneous oil and gas lease drawing, who is directed by a State Office to submit a copy of any agreement he may have with another person in regard to such drawing, submits a copy of an agreement which incorporates by reference a brochure issued by the leasing service with which he had an agreement, but not a copy of the brochure, he has not complied with the directive.

Neil Hirsch, Robertus C. Boon, 35 IBLA 125 (May 22, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is arbitrary and capricious for a BLM State Office to reject a drawing entry card, drawn with first priority, for the reason of trivial corrections on the card by means of a "white out" liguid which does not affect the appearance or feel of the card in any significant way and which corrections obviously were not intended to adversely affect the integrity of the drawing.

James L. Harden, 35 IBLA 128 (May 22, 1978)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

The filing or drawing of an oil and gas lease offer, even though it has first priority, creates no vested rights in the offeror which are constitutionally protected, and where such offer is rejected for any legally cognizable reason, it does not work a forefeiture of the offeror's interest, which amounts only to a hope or an expectation rather than a claim.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where BLM issues a decision reguiring that an oil and gas offeror submit additional advance rental within 30 days, and the offeror files a timely appeal to this Board, the running of the 30 days is suspended. Following affirmation by this Board of BLM's decision, the offeror is properly given the entire 30 days within which to submit the additional rental.

An oil and gas offer which is accompanied by advance rental of $0.50 per acre may not be rejected as not including sufficient advance rental, per 43 CFR 3103.3-2, 3111.1-1(d) and (e)(1), if the regulation raising the rental to $1 is not in effect when the offer was filed.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of unsubstantiated allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration reguirements of the Securities Act of 1933.

Bruce E. Watkins, 36 IBLA 168 (July 31, 1978)

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

Willis L. Lawton, 36 IBLA 178 (July 31, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. An oil and gas lease offer is not accepted by the United States until a lease is executed and signed by the appropriate officer.

S. Duff Kerr, 36 IBLA 199 (Aug. 3, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card by means of an address label, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

Irving B. Brick, 36 IBLA 235 (Aug. 8, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from her address, the State and zip code, the lease offer is properly rejected.

Rita D. Vick, 36 IBLA 275 (Aug. 21, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address, the lease offer is properly rejected notwithstanding assertions of excusable neglect or inadvertence.

Burton A. Rykken, et al., 36 IBLA 277 (Aug. 21, 1978)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available as prescribed by 43 CFR Subpart 3112.

Robert P. Marshall, 36 IBLA 279 (Aug. 21, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. The calling out of the No. 1 drawee's name does not constitute acceptance of the offer. Acceptance of the offer cannot accrue until the lease itself has been executed by the appropriate official of the Government.

S. Duff Kerr, 36 IBLA 302 (Aug. 21, 1978)

Where a high bid was timely filed prior to the deadline for bids, but was subsequently midlaid by BLM and was not relocated until after another lower bid was declared high, BLM properly accepted the true high bid and retracted its declaration regarding the lower bid.

Jack M. Chodar, 36 IBLA 324 (Aug. 23, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of qualifications nor makes reference to a serial number of a record in which such statement has previously been filed, as required by 43 CFR 3102.4-1.

WZL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available, as prescribed by 43 CFR Subpart 3112.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are filed.

Where an oil and gas lease offer for acquired lands is filed for less than the entire tract acquired by the United States, the regulations in 43 CFR 3102.2-3(b)(1) require that the application must describe the land by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

Robert N. Enfield, 36 IBLA 383 (Aug. 31, 1978)

Where land was previously included in an oil and gas lease and thereafter listed for the simultaneous filing of offers pursuant to 43 CFR 3112, and two offers were filed, both of which were rejected, the land is not thereafter open to the filing of over-the-counter offers to lease, but must again be posted for simultaneous filing.

L. A. Walstrom, Jr., 36 IBLA 397 (Sept. 5, 1978)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not dated.

William F. Riggs, 36 IBLA 403 (Sept. 6, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Dexter B. Spalding, 37 IBLA 4 (Sept. 6, 1978)

It is incorrect for BLM to reject an oil and gas lease offer in the simultaneous filing program for failure of the applicant to submit a copy of her agreement with a filing service where there is no evidence that such a written agreement exists. Where a DEC submitted in the simultaneous oil and gas leasing program has been signed by the applicant, and all else is regular, no other requirement of the regulations are called into play.

Bebe Lee Durden, 37 IBLA 15 (Sept. 8, 1978)

The simultaneous drawing system presupposes that each properly filed offer be afforded the same opportunity for priority consideration. This requires that when drawing entry cards are improperly omitted from a drawing, the first drawing be considered as void, and priorities established at a second drawing, in which all entry cards are included, shall control consideration for the oil and gas lease.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

Christiansen Oil, Inc., 37 IBLA 52 (Sept. 18, 1978)

A first drawn simultaneous oil and gas lease offer filed by an association which is not accompanied by evidence of the qualifications of the association to hold an oil and gas lease or which does not refer to the case record in which the evidence had previously been filed, as required by 43 CFR 3102.3-1(a), must be rejected.

A first drawn simultaneous oil and gas lease offer filed by a partnership which is signed by one agent where the partnership agreement authorizes two or more agents, jointly, to file simultaneous oil and gas lease offers, is not signed by an "authorized" agent, as required by 43 CFR 3112.2-1(a), and must be rejected. A grant of authority to "A and B," without more, will be deemed to create a joint agency.

SID Partnership, 37 IBLA 165 (Oct. 10, 1978)

An offeror's use of a leasing service's address on the drawing entry card for a simultaneous oil and gas lease drawing does not disqualify the offer, all else being regular, nor does it call into play other requirements of pertinent regulations.

Lisa Heymann, 37 IBLA 170 (Oct. 10, 1978)

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

Geraldine M. McCarthy, 37 IBLA 323 (Oct. 25, 1978)

While the Department of the Interior does not require oil and gas lease drawing entry cards to be signed and dated at the same time, the signer does attest to the truth of the statements on the card as of the date of the card and is bound by and to its terms.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978)
85 I.D. 408

Where an oil and gas lease drawing entry card contains the names of other parties in interest and the separate statement of interest required to be filed is not signed by the offeror as required by 43 CFR 3102.7, the offer is properly rejected.

Elizabeth Pagedas, 38 IBLA 130 (Nov. 22, 1978)

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected, notwithstanding an allegation that the date of signing might have been deduced from a check accompanying the offer or from the postmark of the envelope in which the offer was submitted.

Theodore R. Kuhn, 38 IBLA 135 (Nov. 29, 1978)

There is no prohibition against an oil and gas lease offeror's using an address which is commonly used by other offerors.

A general allegation that an oil and gas lease offeror has not complied with securities laws is not proper for consideration by the Department of the Interior, which has not been delegated the responsibility for enforcement of securities laws, absent a showing that his activities, including the filing of lease offers, have been judicially enjoined.

Johnnie B. Gryder, 38 IBLA 146 (Dec. 5, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

A protest filed by the No. 2 drawee against the issuance of a lease to the No. 1 drawee is properly dismissed where the only grounds asserted for rejecting the offer are that offeror used an address other than his own and that an agent or attorney-in-fact completed the drawing entry card and failed to submit the statements required in 43 CFR 3102.6-1, and it has been shown that the signature on the card was made by the offeror.

Cecil K. Woodlock, Anthony J. Visco, 38 IBLA 186 (Dec. 6, 1978)

The use of a post office box number as an address is not barred by the oil and gas leasing regulations governing applications or by the Rules of Practice of the Department.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's $10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after Feb. 1977, the increased rate is applicable to leases issued subsequent to that date where the over-the-counter offer was filed prior to effective date of the regulation.

An over-the-counter oil and gas lease offer, properly rejected because of a failure to meet the requirements of the regulations, but which rejection did not become final because an appeal was timely filed, may be considered as having priority as of the date the defect was cured.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals were in a lease which expired before the correction of the status of the minerals was made.

Regardless of whether lands have been withdrawn from leasing and later restored, or were not withdrawn, an over-the-counter oil and gas lease offer must be rejected where the land involved was formerly embraced in an oil and gas lease which has expired by operation of law and has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

Attorneys-in-Fact or Agents

Where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

Virginia A. Rapozo, 33 IBLA 344 (Jan. 18, 1978)

Patricia P. Marks, 34 IBLA 384 (May 2, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Cecil K. Woodlock, Anthony J. Visco, 38 IBLA 186 (Dec. 6, 1978)

Where an inquiry by BLM discloses that an oil and gas lease applicant personally signed his name on his drawing entry card, there can be no question of the application of 43 CFR 3102.6-1(a), since this regulation operates only where an agent or attorney in fact signs the card on his principal's behalf.

Adam F. Zbilski, 34 IBLA 4 (Feb. 8, 1978)

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, including insertion of a current date, all else being regular, does not call into play other requirements of pertinent regulations.

Kenneth Ross, 34 IBLA 61 (Feb. 16, 1978)

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes and regulations, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 34 IBLA 322 (Apr. 24, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

It is improper for the Bureau of Land Management to reject an oil and gas lease simultaneous drawing entry card solely because a filing service completed the card, including parcel number and date, after the offeror had signed it. This is not an action by an agent or attorney-in-fact requiring compliance with 43 CFR 3102.6-1.

Emily S. Corda, 35 IBLA 12 (May 4, 1978)

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

John H. McGann, 35 IBLA 32 (May 8, 1978)

Appellant's charges in respect of filing of registration statements for compliance with securities laws go to question of relationships between filing service companies and their investors, and as such, are properly for consideration by Securities and Exchange Commission. Where they do not indicate noncompliance with oil and gas leasing statutes, regulations, and decisions of this Department, such charges are not proper for consideration by the Department of the Interior, which has not been delegated responsibility for enforcement of securities laws.

Elias C. Bacil, 35 IBLA 198 (May 24, 1978)

Dexter B. Spalding, 37 IBLA 4 (Sept. 6, 1978)

A consent decree obtained by the Securities and Exchange Commission establishes no precedent for cases involving different parties. Allegations of Federal securities law violations in connection with Federal oil and gas leasing should be directed to the Securities and Exchange Commission, the agency with jurisdiction over such matters. The jurisdiction of the Board of Land Appeals does not extend to matters exclusively under the jurisdiction of the SEC, but goes to matters involving compliance with oil and gas leasing statutes and regulations.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

Where a drawing entry card is signed by an attorney-in-fact or agent on behalf of the applicant, the offer cannot be considered to have been submitted by a qualified applicant unless accompanied by a statement evidencing that the attorney-in-fact's authority is still in effect, as required by 43 CFR 3102.6-1.

Energy Reserves Group, Inc., 36 IBLA 57 (June 30, 1978)

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

A successful drawee in a simultaneous oil and gas lease drawing will not be disqualified to receive a lease by reason of unsubstantiated allegations to the effect that the winning drawing entry card was filed for such drawee by an agent and that the agent has failed to observe the registration requirements of the Securities Act of 1933.

Bruce E. Watkins, 36 IBLA 168 (July 31, 1978)

A handwritten signature is presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

A consent decree obtained by the Securities and Exchange Commission (SEC) establishes no precedent for cases involving other parties. The Board of Land Appeals lacks jurisdiction over matters delegated to the SEC. Allegations of Federal Securities Law violations should be directed to the SEC rather than to the Board of Land Appeals.

William Miller, 36 IBLA 349 (Aug. 28, 1978)

An offeror's use of a leasing service's address on the drawing entry card for a simultaneous oil and gas lease drawing does not disqualify the offer, all else being regular, nor does it call into play other requirements of pertinent regulations.

Lisa Heymann, 37 IBLA 170 (Oct. 10, 1978)

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978)
85 I.D. 408

A decision by BLM which states that an oil and gas lease offer must be rejected because the offeror did not submit evidence with his drawing entry card as to who affixed a facsimile signature thereon and how his offer was formulated is erroneous. However, where BLM allows the offeror a last chance to submit this information prior to rejecting the offer, that decision will not be vacated, but will be modified and regarded as a simple request for additional information from which to determine whether the offeror's failure to file an

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

agency statement requires rejection of his offer per 43 CFR 3102.6-1(a)(2).

A request to an oil and gas lease offeror for additional information from which to determine whether his failure to file an agency statement requires rejection of his offer per 43 CFR 3102.6-1(a)(2) need not demand information regarding whether the agent who signed the offer card, if any, has an interest in the offer, as the offer will be rejected in these circumstances because no agency statement was filed, regardless of whether or not the agent has an undisclosed interest in the offer.

Under 43 CFR 1821.3-1, information submitted by an oil and gas offeror pursuant to a request by BLM need not be made by affidavit under oath.

Duncan Miller, 38 IBLA 154 (Dec. 5, 1978)

Even though a power of attorney has been filed with the State Office of the Bureau of Land Management and reference to this was included on a simultaneously filed oil and gas lease drawing entry card, the regulations require that the attorney-in-fact or agent file two additional statements along with the card: first, a statement that his authority is still in effect as required by 43 CFR 3102.6-1(a)(1), and second, a statement by the attorney-in-fact or agent about his agreement with the offeror and any interest in the lease pursuant to 43 CFR 3102.6-1(a)(2).

Cotton Petroleum Corp., 38 IBLA 271 (Dec. 13, 1978)

Description

BLM is without authority to alter an ambiguous competitive oil and gas lease bid in order to make it valid.

Where an oil and gas competitive lease bid is ambiguous, due to the inclusion in it of irreconcilable conflicting descriptions of the desired land, BLM should reject it.

B. D. Price, 34 IBLA 41 (Feb. 14, 1978)

An oil and gas lease drawing entry card is properly rejected where it contains incorrect information, in that the parcel number of the land applied for is misstated, notwithstanding the fact that the misstatement was the result of an inadvertent typographical error.

Amerada Hess Corp., 34 IBLA 64 (Feb. 17, 1978)

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Where an offer for an oil and gas lease describes lands in a section number followed by several aliquot parts and concludes with the words "(all available)," those words refer only to lands available within the aliquot parts and not to other aliquot parts of the section not specifically listed.

Jean Oakason, 34 IBLA 355 (Apr. 26, 1978)

Drawings

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the president and/or the vice president of the corporation also filed applications for the same parcel of land in the same drawing as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Graybill Terminals Co., 33 IBLA 243 (Jan. 5, 1978)

In the absence of any irregularity connected with an offer, an oil and gas lease may be issued to an applicant who has stated that he personally stamped the drawing entry card with his facsimile signature.

Louis J. Boland, 33 IBLA 269 (Jan. 5, 1978)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Charles P. Ricci, 33 IBLA 288 (Jan. 5, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a serial number of a record in which such statement had previously been filed, as required by 43 CFR 3102.4-1.

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by submission of further information.

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed. Where a corporation submits a drawing card which is not signed by a corporate officer whose authority to sign is established by the procedure set out in 43 CFR 3102.4-1, the card is not "signed" within the meaning of 43 CFR 3112.2-1(a), and its offer must accordingly be rejected. Placing the corporation's name in script on the signature line does not constitute "signing" the card.

Anchors and Holes, Inc., 33 IBLA 339 (Jan. 16, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an oil and gas lease offer on a drawing entry card is signed by the offeror and lists the names of 10 other parties in interest, and is accompanied by a separate statement signed by each of the 11 parties in interest declaring (1) their respective addresses, (2) that they are American citizens, (3) that they had an oral agreement to participate in the lease, (4) that they would own equally, and (5) that they do not have direct or indirect interests in leases which exceed 246,000 in any one State, the requirements of 43 CFR 3102.7 have been satisfied and the lease may issue, all else being regular.

Morris M. Cohen, et al., 33 IBLA 365 (Jan. 23, 1978)

An oil and gas drawing entry card may not be rejected merely because it is signed by the applicant before the parcel number is entered on it by another.

Adam F. Zbilski, 34 IBLA 4 (Feb. 8, 1978)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not signed by the offeror.

Adobe Oil and Gas Corp., 34 IBLA 13 (Feb. 10, 1978)

An offeror whose drawing entry card is drawn with first priority for a parcel of land properly available at the time of posting is entitled to receive an oil and gas lease, all else being regular.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

An oil and gas lease drawing entry card is properly rejected where it contains incorrect information, in that the parcel number of the land applied for is misstated, notwithstanding the fact that the misstatement was the result of an inadvertent typographical error.

Amerada Hess Corp., 34 IBLA 64 (Feb. 17, 1978)

A simultaneous oil and gas lease drawing entry card containing an incorrect parcel number is properly rejected and the filing fee is properly retained by the Bureau of Land Management.

Henry A. Alker, 34 IBLA 136 (Mar. 8, 1978)

Where the Director, BLM, in a general instruction to all Bureau offices, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

Margaret A. Ruggiero, et al., 34 IBLA 171 (Mar. 14, 1978)

W. C. Yahmel, 34 IBLA 377 (May 1, 1978)

Where it is shown that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of the filing fee.

Charles P. Ricci (On Reconsideration), 34 IBLA 186 (Mar. 21, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent are submitted along with his offer card.

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

Strict compliance with 43 CFR 3112.2-1, which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent, is required. Where no date of signing appears on an entry card, the offer is properly rejected.

Jack L. Macdowell, 34 IBLA 202 (Mar. 22, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

John G. Keane, 37 IBLA 364 (Nov. 2, 1978)

Where it is first alleged on appeal that a first-drawn simultaneous oil and gas entry card has been rejected in order for the lease to be awarded to the offeree first drawn in a prior drawing, which prior drawing was void because of an omitted entry card, but the record as to the second drawing is incomplete and an affected party has not been given opportunity to participate, the case may be remanded for augmentation of the record and initial consideration by Bureau of Land Management.

W. J. Langley, 34 IBLA 213 (Mar. 27, 1978)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

William R. Boehm, 34 IBLA 216 (Mar. 27, 1978)

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

The Department of the Interior may only issue an oil and gas lease to the first-qualified applicant, and a drawing entry card offer is properly rejected where it lists a second party in interest who fails to file timely the statement required by 43 CFR 3102.7.

Roy W. Waer, Robert A. Griggs, 34 IBLA 237 (Mar. 28, 1978)

An entry card in a simultaneous oil and gas lease drawing need not be rejected where the card sets out in the parcel designation the complete name of the State in which the parcel is located instead of the abbreviation of the State name used as the State code prefix. All else being regular, such an entry card is fully executed.

Clayton Chessman, 34 IBLA 263 (Mar. 31, 1978)

Douglas Steele, 34 IBLA 344 (Apr. 26, 1978)

J. C. Davis, 35 IBLA 92 (May 12, 1978)

Where an attorney-in-fact or an agent does not sign the drawing card which is signed by the offeror, the showings as to the agent embodied in 43 CFR 3102.6-1 need not be submitted.

Elias C. Bacil, 34 IBLA 322 (Apr. 24, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas drawing entry card must be fully executed by the applicant, and when the State prefix to the parcel number is omitted, the lease offer is properly rejected.

Richard Wheeler, Jr., 34 IBLA 359 (May 1, 1978)

Offeror's failure to enter postal zip code of his address on entry card for simultaneous oil and gas lease drawing properly results in BLM's rejecting his offer. Such omission contradicts requirement in 43 CFR 3112.2-1(a) that entry card be "fully executed."

William K. DnKate, 35 IBLA 51 (May 9, 1978)

Where an attorney-in-fact or an agent does not sign the drawing card, the showings as to the agent embodied in 43 CFR 3102.6-1 need not be submitted.

Elias C. Bacil, 35 IBLA 198 (May 24, 1978)

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Antomatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in snch cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches eo instante.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The mere use of a filing service's address on a simultaneous oil and gas lease drawing entry card does not constitute a violation of the applicable statutes or of any Departmental regulations, is not otherwise impermissible and is not a ground for rejecting the card.

Marion Bacil, 35 IBLA 366 (June 23, 1978)

Where the Director of the Bureau of Land Management issues a general instruction to all BLM offices specifying which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers and directing that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

The exclusion of drawing entry cards from a simultaneous oil and gas lease drawing for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

It is arbitrary and capricious for a BLM State Office to reject a drawing entry card, drawn with first priority, because of trivial corrections on the card by means of an opaque "white-out" liquid which does not affect the appearance or feel of the card in any significant way and which corrections obviously were not intended to adversely affect the integrity of the drawing.

Raymond A. Berry, et al., 35 IBLA 386 (June 27, 1978)

Where a drawing entry card is signed by an attorney-in-fact or agent on behalf of the applicant, the offer cannot be considered to have been submitted by a qualified applicant unless accompanied by a statement evidencing that the attorney-in-fact's authority is still in effect, as required by 43 CFR 3102.6-1.

Energy Reserves Group, Inc., 36 IBLA 57 (June 30, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

An offeror's use of a leasing service's address on a simultaneous noncompetitive oil and gas lease offer drawing entry card does not disqualify the offer.

Bruce E. Watkins, 36 IBLA 168 (July 31, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. An oil and gas lease offer is not accepted by the United States until a lease is executed and signed by the appropriate officer.

S. Duff Kerr, 36 IBLA 199 (Aug. 3, 1978)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card by means of an address label, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

Irving B. Brick, 36 IBLA 235 (Aug. 8, 1978)

A simultaneously filed offer to lease for oil and gas is properly rejected where the offeror fails to complete the drawing entry card by filling in the name of the State in which he resides.

Sam Powell, 36 IBLA 273 (Aug. 21, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from her address, the State and zip code, the lease offer is properly rejected.

Rita D. Vick, 36 IBLA 275 (Aug. 21, 1978)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address, the lease offer is properly rejected notwithstanding assertions of excusable neglect or inadvertence.

Burton A. Rykken, et al., 36 IBLA 277 (Aug. 21, 1978)

Unsigned and undated drawing entry cards filed in the simultaneous oil and gas leasing drawings must be rejected. The calling out of the No. 1 drawee's name does not constitute acceptance of the offer. Acceptance of the offer cannot accrue until the lease itself has been executed by the appropriate official of the Government.

S. Duff Kerr, 36 IBLA 302 (Aug. 21, 1978)

When the president of a corporation is the successful offeror in a drawing of simultaneous oil and gas lease offers and the vice president and the corporation also file applications for the same parcel of land in the same drawing, the president's offer must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation, thereby increasing its chances to be the successful applicant under 43 CFR 3112.5-2.

William R. Boehm, 36 IBLA 346 (Aug. 28, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The mere use by an offeror of a filing service's address on a drawing entry card does not violate any applicable statute or regulation and, therefore, is not a ground for rejecting the card.

A handwritten signature is presumed to be written by the person named. Where an attorney-in-fact or an agent does not sign a drawing entry card, the provisions of 43 CFR 3102.6-1 are not invoked.

The burden is on the protestant to prove by competent evidence justification for the disqualification of the successful drawee in an oil and gas lease offer simultaneous filing. Mere allegations are insufficient.

William Miller, 36 IBLA 349 (Aug. 28, 1978)

When a person files two oil and gas lease offers for a single parcel in the simultaneous oil and gas leasing procedure, one as a joint applicant with the spouse and another as the sole applicant, the applicable regulation, 43 CFR 3112.2-1(a)(2), reguires rejection of both offers regardless of whether there was any intent to file more than one offer or to profit from any multiple filing.

Rupert Hickman, et ux., 36 IBLA 353 (Aug. 28, 1978)

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of qualifications nor makes reference to a serial number of a record in which such statement has previously been filed, as required by 43 CFR 3102.4-1.

WZL Investment Corp., 36 IBLA 355 (Aug. 31, 1978)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not dated.

William F. Riggs, 36 IBLA 403 (Sept. 6, 1978)

The fact that the addresses of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not thereby disqualify the offer.

Dexter B. Spalding, 37 IBLA 4 (Sept. 6, 1978)

The burden is on a protestant to show, as justification for the disqualification of the successful drawee in a simultaneous filing drawing procedure, that the offer is in fact defective. A suggestion of the possibility of violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing of disqualification, a protest alleging disqualification is properly rejected.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

Established and long-standing Departmental policy relating to the administration of the simultaneous oil and gas leasing system is binding on all employees of the Bureau of Land Management, until such time as it is properly changed.

The simultaneous drawing system presupposes that each properly filed offer be afforded the same opportunity for priority consideration. This reguires that when

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

drawing entry cards are improperly omitted from a drawing, the first drawing be considered as void, and priorities established at a second drawing, in which all entry cards are included, shall control consideration for the oil and gas lease.

Milton D. Feinberg, Benson J. Lamp, 37 IBLA 39 (Sept. 18, 1978) 85 I.D. 380

A first drawn simultaneous oil and gas lease offer filed by a partnership which is signed by one agent where the partnership agreement authorizes two or more agents, jointly, to file simultaneous oil and gas lease offers, is not signed by an "authorized" agent, as reguired by 43 CFR 3112.2-1(a), and must be rejected. A grant of authority to "A and B," without more, will be deemed to create a joint agency.

SID Partnership, 37 IBLA 165 (Oct. 10, 1978)

A simultaneously filed oil and gas lease offer listing the name of an individual and a corporation as applicants, on the front of the card and also on reverse signature side, is properly rejected where no statement of qualifications or corporate reference number accompanies the card as reguired by 43 CFR 3102.4-1. This defect cannot be cured after the drawing by the individual's subseguently filing a statement that the corporation has no interest in the offer, and was merely designated for address purposes only.

George E. Mattison, 37 IBLA 193 (Oct. 11, 1978)

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

Geraldine M. McCarthy, 37 IBLA 323 (Oct. 25, 1978)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

D. F. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected, notwithstanding an allegation that the date of signing might have been deduced from a check accompanying the offer or from the postmark of the envelope in which the offer was submitted.

Theodore R. Kuhn, 38 IBLA 135 (Nov. 29, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

"Interest." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/ corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract, due to the partner's/officer's/ associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

Where an oil and gas lease offeror has indicated that he is the sole party in interest in the offer, but a protestant shows that he is a member of a firm which bears his name and the name of another, that the firm is engaged in the oil business, and that the address of record on the lease offer is the address of the business firm, the case will be remanded for an investigation to ascertain if there has been a violation of 43 CFR 3102.7 and/or 43 CFR 3112.5-2.

Johnnie B. Gryder, 38 IBLA 146 (Dec. 5, 1978)

Even though a power of attorney has been filed with the State Office of the Bureau of Land Management and reference to this was included on a simultaneously filed oil and gas lease drawing entry card, the regulations require that the attorney-in-fact or agent file two additional statements along with the card: first, a statement that his authority is still in effect as required by 43 CFR 3102.6-1(a)(1), and second, a statement by the attorney-in-fact or agent about his agreement with the offeror and any interest in the lease pursuant to 43 CFR 3102.6-1(a)(2).

A noncompetitive oil and gas lease may only be issued to the first qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first qualified applicant.

Cotton Petroleum Corp., 38 IBLA 271 (Dec. 13, 1978)

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals, whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

Filing

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Charles P. Ricci, 33 IBLA 288 (Jan. 5, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where it is shown that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of the filing fee.

Charles P. Ricci (On Reconsideration), 34 IBLA 186 (Mar. 21, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

When the president of a corporation is the successful offeror in a drawing of simultaneous oil and gas lease offers and the vice president and the corporation also file applications for the same parcel of land in the same drawing, the president's offer must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation, thereby increasing its chances to be the successful applicant under 43 CFR 3112.5-2.

William R. Boehm, 36 IBLA 346 (Aug. 28, 1978)

640-acre Limitation

An oil and gas lease offer to lease less than 640 acres which adjcins land available for leasing is properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

Six-mile Square Rule

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

Sole Party in Interest

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the name of an additional party in interest and the parties fail to submit a statement of their separate interests, any agreements between them, and evidence of the qualifications of each offeror to hold the oil and gas lease within 15 days of the filing.

Essie M. Cohan, Moses Daniel Cohan, 33 IBLA 266 (Jan. 5, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where an oil and gas lease offer on a drawing entry card is signed by the offeror and lists the names of 10 other parties in interest, and is accompanied by a separate statement signed by each of the 11 parties in interest declaring (1) their respective addresses, (2) that they are American citizens, (3) that they had an oral agreement to participate in the lease, (4) that they would own equally, and (5) that they do not have direct or indirect interests in leases which exceed 246,000 in any one State, the requirements of 43 CFR 3102.7 have been satisfied and the lease may issue, all else being regular.

Morris M. Cohen, et al., 33 IBLA 365 (Jan. 23, 1978)

Where an offeror and his agent filing service submit statements along with a drawing entry card, which statements indicate unequivocally that there is no agreement between them creating an interest in the agent, thus apparently obviating the need to submit details of the offeror/agent agreement per 43 CFR 3102.6-1, BLM, in its discretion, may either decline to inquire further into the details of the agreement or may request and examine a copy of the agreement to determine whether such an "interest" in the agent existed at the time the offer was filed.

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined by this Department to create an interest in the lease for the service, and the service files a waiver of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the waiver is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

The Department of the Interior may only issue an oil and gas lease to the first-qualified applicant, and a drawing entry card offer is properly rejected where it lists a second party in interest who fails to file timely the statement required by 43 CFR 3102.7.

Roy W. Waer, Robert A. Griggs, 34 IBLA 237 (Mar. 28, 1978)

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, the burden is on a protestant attacking the validity of the offer to prove an accusation that there is an agreement giving the filing service an enforceable interest in the lease to be issued.

Clyde E. Frazier, 36 IBLA 141 (July 25, 1978)

"Interest." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the service is authorized to act as his exclusive representative in the sale of any lease rights obtained by him, and he is required to pay the service a set commission plus a percentage of revenues derived from any retained royalty interests, on any such sale, the leasing service has an enforceable right to share in any profits which may derive or accrue from the lease and, therefore, has an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest, and he is required by regulation, 43 CFR 3102.7, both to reveal this fact at the time his offer is filed, and to provide the names of other interested parties, the nature and extent of their interest, and the nature of the agreement between them, not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

Where a leasing service is held to have an interest in the offer of one of its clients on a particular parcel of land, and the president of the service also files an offer in his own name on that parcel, the prohibition in 43 CFR 3112.5-2 against multiple filings has been violated, as, in addition to its interest in its client's offer, the service also has an interest in its president's offer, owing to his fiduciary duty to the service.

Marty E. Sixt, 36 IBLA 374 (Aug. 31, 1978)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest and the statement of interest, copy, or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time required by 43 CFR 3102.7, the offer must be rejected.

William R. Curtis, 37 IBLA 124 (Oct. 3, 1978)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file the statement of their interests, the agreement between the parties, and the evidence of their qualifications within the time required by 43 CFR 3102.7.

Bill L. Lewis and Stanley M. Elliott, 37 IBLA 230 (Oct. 16, 1978)

"Interest." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the first $8,000 of the proceeds from any sale of a lease goes to the individual, the next $3,500 goes to the leasing service, and the balance of the proceeds goes to the individual, the leasing service has an enforceable right to a defined share in profits which may derive or accrue from the lease, and, therefore, has an "interest" in the offer as defined in 43 CFR 3100.0-5(b).

When a leasing service holds an interest in the anticipated lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest, and he is required by regulation, 43 CFR 3102.7, both to reveal this fact at the time his offer is filed, and to provide the names of other interested parties, the nature and extent of their interest, and the nature of the agreement between them, not later than 15 days after the filing of the offer. Failure to file the required statements must result in rejection of the offer.

Gertrude Galauner, 37 IBLA 266 (Oct. 19, 1978)

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

Where an oil and gas lease drawing entry card contains the names of other parties in interest and the separate statement of interest required to be filed is not signed by the offeror as required by 43 CFR 3102.7, the offer is properly rejected.

Elizabeth Pagedas, 38 IBLA 130 (Nov. 22, 1978)

"Interest." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/ corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract, due to the partner's/officer's/ associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

Where an oil and gas lease offeror has indicated that he is the sole party in interest in the offer, but a protestant shows that he is a member of a firm which bears his name and the name of another, that the firm is engaged in the oil business, and that the address of record on the lease offer is the address of the business firm, the case will be remanded for an investigation to ascertain if there has been a violation of 43 CFR 3102.7 and/or 43 CFR 3112.5-2.

Johnnie B. Gryder, 38 IBLA 146 (Dec. 5, 1978)

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals, whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

ASSIGNMENTS OR TRANSFERS

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

An application for assignment of an undivided partial interest in an oil and gas lease is properly approved by BLM effective the first day of the lease month following the date of filing of the application. In the interim between the filing of the application and the effective date of the assignment, the prospective assignor remains the sole lessee, and, as such, is the only person who may relinquish rights under the lease.

Sol Singer, Gretchen Capital, Ltd., 35 IBLA 361 (June 23, 1978)

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

BONA FIDE PURCHASER

Under 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(a), BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Robert G. Race, Clyde N. Beggs, 37 IBLA 162 (Oct. 10, 1978)

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

BONDS

When a Statewide bond is reduced below the required amount because the U.S. Geological Survey recovered from the surety on the bond assessments against oil and gas leases, the Bureau of Land Management must require the principal on the bond to file a new bond or bonds in the appropriate amount.

James S. Guleke, 34 IBLA 1 (Feb. 8, 1978)

A regulation which provides that coverage of nationwide oil and gas bond in force at the effective date of the regulation may be expanded by a rider to include geothermal resources leases does not permit a replacement nationwide oil and gas bond executed after the effective date of the regulation to be so modified to include geothermal resources operations.

Mono Power Co., 37 IBLA 100 (Sept. 28, 1978)

When an oil and gas lessee's bond is reduced below the required amount because of Geological Survey's recovery from the surety of unpaid assessments due under the lease, the Bureau of Land Management must require the principal on the bond to file a new bond in the appropriate amount.

William J. Colman, 37 IBLA 310 (Oct. 23, 1978)

CANCELLATION

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the president and/or the vice-president of the corporation also filed applications for the same parcel of land in the same drawing as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Grayhill Terminals Co., 33 IBLA 243 (Jan. 5, 1978)

30 U.S.C. § 188(b)(1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Where the Bureau of Land Management notifies an oil and gas lessee of a deficiency in initial rental and the deficiency is not paid to the Bureau within the

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

time prescribed, but is paid some 5 months later, the delay being ascribed to "oversight" the lateness of the payment will not be excused and the cancellation of the lease for failure to pay the rental timely is properly sustained.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

A noncompetitive oil and gas lease must be canceled where the land described therein was determined by the United States Geological Survey to be within a known geologic structure of a producing oil or gas field prior to the date of signing the lease on behalf of the United States by the authorized officer.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

Robert W. David, 35 IBLA 205 (May 26, 1978)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

Christiansen Oil, Inc., 37 IBLA 52 (Sept. 18, 1978)

Under 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(a), BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Robert G. Race, Clyde N. Beggs, 37 IBLA 162 (Oct. 10, 1978)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Where the official record of an oil and gas lease contains nothing either showing that an oil and gas lease applicant's $10 filing fee was included in a check which was dishonored by the drawee bank, or rebutting the applicant's assertion that his filing fee was instead included in another check processed by BLM without incident, BLM's decision to cancel a lease issued pursuant to this offer because no filing fee was paid as required by 43 CFR 3103.2-1(a) will not be sustained for that reason.

Where eight individuals enter into a single agreement with a leasing service whereby the service supplies parcel numbers, and the eight individuals file offers on two of these parcels and pay all their filing fees by a single check, there is a strong implication that each of the individuals has an interest in all of the offers filed on these parcels. Where one of these individuals, whose offer has resulted in the issuance of a lease, fails to respond to an order by this Board directing him to submit details of the agreement between himself and the other individuals by which to determine whether the requirements of 43 CFR 3102.6-1 and 3112.5-2 have been violated, it will be presumed that the indicated violations have occurred, and the cancellation of the lease will be affirmed on that basis.

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. § 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

Robert A. Chenoweth, 38 IBLA 285 (Dec. 13, 1978)

COMMUNITIZATION AGREEMENTS

Sec. 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1970), providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j) (1970), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

COMPETITIVE LEASES

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid tendered at a competitive onshore oil and gas lease sale is not clearly spurious or irresponsible, and is rejected solely on the basis of a statement by an official that the bid is inadequate and no factual basis for that conclusion appears in the case record, the decision will be set aside and the case remanded.

Basil W. Reagel, 34 IBLA 29 (Feb. 14, 1978)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

BLM is without authority to alter an ambiguous competitive oil and gas lease bid in order to make it valid.

B. D. Price, 34 IBLA 41 (Feb. 14, 1978)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Where the high bid tendered at a competitive upland oil and gas lease sale, which is not clearly spurious or irresponsible, is rejected solely on the basis of a conclusory statement that the bid is inadequate and the factual basis for that conclusion does not appear in the case record, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

Before issuance of a competitive oil and gas lease for land within the area of an approved unit agreement, it is proper to require the successful bidder to file evidence that he has entered into an agreement with the unit operator for development of the land in the lease under the terms and provisions of the approved unit agreement or to file a statement giving satisfactory reasons for failure to enter such agreement.

Where high bidder for a competitive oil and gas lease within the area of an approved unit agreement fails to file evidence showing joinder to the unit agreement or to submit satisfactory reasons for failure to enter into agreement with the unit operator, it is proper to reject his bid and to refund the bonus payment tendered with the bid.

Gordon H. Barrows, 36 IBLA 160 (July 31, 1978)

Where a high bid was timely filed prior to the deadline for bids, but was subsequently midlaid by BLM and was not relocated until after another lower bid was declared high, BLM properly accepted the true high bid and retracted its declaration regarding the lower bid.

Jack M. Chodar, 36 IBLA 324 (Aug. 23, 1978)

The failure of a high bidder, in an upland competitive lease sale, to submit one-fifth of the amount bid with his bid in the proper form of remittance, may not be waived where the bidder submitted a sight draft, and thus retained control of the fund until presentment and final payment.

Mesa Petroleum Co., 37 IBLA 103 (Sept. 28, 1978)

Where the high bidder in a competitive oil and gas lease sale submits a bid in which the per acre component bid is inconsistent with the total bid, clarification of the bid will be permitted where the

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

intent of the bidder is discernible from the evidence of the bid form, itself.

Patrick Petroleum Corp., 38 IBLA 93 (Nov. 15, 1978)

CONSENT OF AGENCY

The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Geo, Inc., 34 IBLA 27 (Feb. 14, 1978)

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

A. Johnson & Co., Inc., 38 IBLA 182 (Dec. 6, 1978)

DESCRIPTION OF LAND

Where an offer for an oil and gas lease describes lands in a section number followed by several aliquot parts and concludes with the words "(all available)," those words refer only to lands available within the aliquot parts and not to other aliquot parts of the section not specifically listed.

Jean Oakason, 34 IBLA 355 (Apr. 26, 1978)

DISCRETION TO LEASE

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Basil W. Reagel, 34 IBLA 29 (Feb. 14, 1978)

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

N L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for endangered animals, is a natural scenic asset, and has potential recreational value, and where BLM determines that oil and gas operation would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed in the absence of countervailing compelling reasons.

Dell K. Hatch, Amoco Production Co., 34 IBLA 274 (Apr. 11, 1978)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. Oil and gas lease offers within area proposed for inclusion in the wild and scenic river system may be rejected to protect such areas.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

The BLM may reject any offer to lease public lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for mule deer and elk, is a natural scenic asset, and has recreational, archaeological and paleontological values, and where BLM determines that oil and gas drilling operations would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed, in the absence of compelling countervailing reasons.

James O. Breene, Jr., 38 IBLA 281 (Dec. 13, 1978)

DRAINAGE

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1970). If drainage occurs on such lands by reason of wells drilled on adjacent lands, agreements with the owners thereof may be entered into by the Bureau of Land Management pursuant to 43 CFR 3100.3.

Hawthorn Oil Co., 37 IBLA 91 (Sept. 22, 1978)

DRILLING

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

A unitized oil and gas lease is entitled to an extension for 2 years where production testing operations are being conducted on the unit well on the expiration date of the lease. Such testing qualifies as "actual drilling operations" as defined by 43 CFR 3107.2-1 which includes not only the physical drilling of a well, but the testing, completing, or equipping of such well for production of oil or gas.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

OIL AND GAS LEASES--Continued

DRILLING--Continued

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances. Efforts to secure a large or full-size rig, which are frustrated by unforeseen delays on the part of the contractor supplying the rig so that "actual drilling operations" are not undertaken for more than 60 days do not constitute diligent drilling operations.

To qualify for a 2-year extension of an oil and gas lease pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with the good faith intent to complete a producing well as demonstrated by all of the circumstances. Where prior approval of the Geological Survey had not been obtained for a change in hole and casing arrangements, drilling that did occur on the last day of the lease term was not undertaken in good faith and the lease must be held to have expired.

Classic Mining Corp., 37 IBLA 338 (Oct. 27, 1978)

EXTENSIONS

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

For a noncompetitive oil and gas lease issued subsequent to Sept. 2, 1960, to be entitled to a 2-year extension for drilling over, actual drilling operations must be commenced on the leasehold, or for the benefit of the leasehold under an approved cooperative or unit plan of development, prior to the end of the primary term of 10 years, and be diligently prosecuted at that time.

Where the term of a noncompetitive oil and gas lease issued subsequent to Sept. 2, 1960, has been extended beyond its 10-year primary term, and actual drilling operations are being conducted on the terminal date, there is no entitlement to a 2-year extension for drilling over unless the drilling operations were commenced prior to the end of the 10-year primary term and had been diligently prosecuted thereafter. It makes no difference whether the extension beyond the 10-year primary term was given because of segregation in accordance with 43 CFR 3107.4-3 (partial commitment of lease to an approved unit agreement), or because of elimination of lease from an approved unit agreement under 43 CFR 3107.5.

Yates Petroleum Corp., 34 IBLA 7 (Feb. 8, 1978)

Texaco, Inc., 34 IBLA 127 (Mar. 7, 1978)

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

A unitized oil and gas lease is entitled to an extension for 2 years where production testing operations are being conducted on the unit well on the expiration date of the lease. Such testing qualifies as "actual drilling operations" as defined by 43 CFR 3107.2-1 which includes not only the physical drilling of a

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

well, but the testing, completing, or equipping of such well for production of oil or gas.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

Where a Federal oil and gas lessee commits a portion of his lease to a proposed unit agreement, thereafter assigns all that committed portion to another, which assignment is approved, and subsequently the proposed unit is approved by the Geological Survey, the lessee is not entitled to a 2-year extension under 30 U.S.C. § 226(j) (1970), for the retained portion of the lease.

F. M. Tully, 37 IBLA 62 (Sept. 18, 1978)

Noncompetitive oil and gas leases are issued for primary terms of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

To qualify for a 2-year extension of an oil and gas lease under the diligent drilling provision of 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations, that is, penetration of the ground by a drilling bit, were being prosecuted on the lease, or under an approved cooperative or unit plan of development or operation for the benefit of the lease, on the last day of the primary term of the lease. Preliminary work including site preparation and grading of access road is not "actual drilling operations" sufficient to qualify the lease for an extension of 2 years.

Estelle Wolf, et al., 37 IBLA 195 (Oct. 12, 1978)

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances. Efforts to secure a large or full-size rig, which are frustrated by unforeseen delays on the part of the contractor supplying the rig so that "actual drilling operations" are not undertaken for more than 60 days do not constitute diligent drilling operations.

To qualify for a 2-year extension of an oil and gas lease pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with the good faith intent to complete a producing well as demonstrated by all of the circumstances. Where prior approval of the Geological Survey had not been obtained for a change in hole and casing arrangements, drilling that did occur on the last day of the lease term was not undertaken in good faith and the lease must be held to have expired.

Classic Mining Corp., 37 IBLA 338 (Oct. 27, 1978)

FIRST QUALIFIED APPLICANT

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

enforceable right to share in the proceeds of any sale of the lease or any interest therein. Such an agreement creates for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined by this Department to create an interest in the lease for the service, and the service files a waiver of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the waiver is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Alfred L. Easterday, 34 IBLA 195 (Mar. 22, 1978)

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and no excuse may be considered, no discretion exercised, no grace period invoked, and the right of

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

the next drawee to receive first consideration attaches eo instante.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

An oil and gas lease offer filed in the name of a corporation is properly rejected where it is not accompanied by corporate qualification papers nor by any reference to a serial number where such information is to be found, as required by 43 CFR 3102.4-1.

Where a simultaneous drawing entry card culminates in lease issuance and it is subsequently ascertained that the serial number represented by the offeror to contain the corporate qualification papers, relates to "Christiansen Oil and Gas, Inc.," rather than to the offeror-lessee, Christiansen Oil, Inc., the lease is properly canceled, since the offeror was not the first-qualified offeror.

Christiansen Oil, Inc., 37 IBLA 52 (Sept. 18, 1978)

A first drawn simultaneous oil and gas lease offer filed by an association which is not accompanied by evidence of the qualifications of the association to hold an oil and gas lease or which does not refer to the case record in which the evidence had previously been filed, as required by 43 CFR 3102.3-1(a), must be rejected.

SID Partnership, 37 IBLA 165 (Oct. 10, 1978)

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978)
85 I.D. 403

A noncompetitive oil and gas lease may only be issued to the first qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first qualified applicant.

Cotton Petroleum Corp., 38 IBLA 271 (Dec. 13, 1978)

FUTURE AND FRACTIONAL INTEREST LEASES

Regulations in force prior to Oct. 28, 1976, prohibited, in the absence of extraordinary circumstances, the issuance of oil and gas leases for fractional interests to one who would own less than 50 percent of operating rights in the leased property. The later determination that such a policy may not in general serve the public interest and the expression of the new policy in a revised regulation does not constitute an extraordinary circumstance.

Repeal of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property gives priority to an otherwise regular offer which would have had to be rejected under the former regulations, as of the effective date of the repeal, provided that no offers qualified under the former regulation have been received prior to repeal, and that the offer has not been rejected prior to repeal.

A lease erroneously issued in violation of regulations which prohibit leasing fractional interests to one who

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

would own only a minority of operating rights in the leased property must be canceled if a lease is awarded to another applicant in a drawing held among the first and other offers simultaneously filed following repeal of the regulations.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Where BLM rejected appellant's offer for oil and gas lease because it failed to receive from him fractional interest statement required by 43 CFR 3130.4-4 (1975), and evidence affidavits by appellant and his wife were filed on appeal reciting that he mailed such statement with his entry card for simultaneous drawing, the presumption of administrative regularity obtains and appellant must be deemed to have not borne his risk of nonpersuasion.

Charles J. Babington, 36 IBLA 107 (July 14, 1978)

KNOWN GEOLOGICAL STRUCTURE

Land included within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding.

A noncompetitive oil and gas lease must be canceled where the land described therein was determined by the United States Geological Survey to be within a known geologic structure of a producing oil or gas field prior to the date of signing the lease on behalf of the United States by the authorized officer.

Amerada Hess Corp., 33 IBLA 293 (Jan. 10, 1978)

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

Where an offeror submits a bid in a competitive sale, under the law and regulations governing such sales, he accepts the premise that the land is within the known geologic structure of a producing field.

Gerald S. Ostrowski, 34 IBLA 254 (Mar. 28, 1978)

LANDS SUBJECT TO

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not been posted as available as prescribed by 43 CFR subpart 3112.

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where the Bureau of Land Management rejects in part an oil and gas lease offer because the subject lands are within a coal permit, and where a general policy determination as to the compatibility of concurrent development of these minerals is pending, the case will be remanded to be suspended and subsequently acted upon in light of whatever general policy is formulated.

Thomas F. Manera, 33 IBLA 362 (Jan. 23, 1978)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

Oil and gas lease offers may be rejected where legal title to the lands in issue is uncertain. It is not improper for BLM to refuse to suspend the offers pending determination of the title issue.

N L Industries, Inc., 34 IBLA 99 (Feb. 23, 1978)

Regulations in force prior to Oct. 28, 1976, prohibited, in the absence of extraordinary circumstances, the issuance of oil and gas leases for fractional interests to one who would own less than 50 percent of operating rights in the leased property. The later determination that such a policy may not in general serve the public interest and the expression of the new policy in a revised regulation does not constitute an extraordinary circumstance.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

An oil and gas lease offer for lands in a reservoir right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

An over-the-counter oil and gas lease offer filed for land formerly embraced in an oil and gas lease which has expired by operation of law, which land has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112, must be rejected.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

The boundary of an oil and gas lease covering lands riparian to a navigable river is the meander line indicated on the official plat of survey and not the waterline. Thus, lands accreted to the leased lands may be separately leased.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available, as prescribed by 43 CFR Subpart 3112.

Robert P. Marshall, 36 IBLA 279 (Aug. 21, 1978)

Robert N. Enfield, 36 IBLA 383 (Aug. 31, 1978)

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

Where land was previously included in an oil and gas lease and thereafter listed for the simultaneous filing of offers pursuant to 43 CFR 3112, and two offers were filed, both of which were rejected, the land is not thereafter open to the filing of over-the-counter offers to lease, but must again be posted for simultaneous filing.

L. A. Walstrom, Jr., 36 IBLA 397 (Sept. 5, 1978)

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1970). If drainage occurs on such lands by reason of wells drilled on adjacent lands, agreements with the owners thereof may be entered into by the Bureau of Land Management pursuant to 43 CFR 3100.3.

Hawthorn Oil Co., 37 IBLA 91 (Sept. 22, 1978)

Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

were in a lease which expired before the correction of the status of the minerals was made.

Regardless of whether lands have been withdrawn from leasing and later restored, or were not withdrawn, an over-the-counter oil and gas lease offer must be rejected where the land involved was formerly embraced in an oil and gas lease which has expired by operation of law and has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

NONCOMPETITIVE LEASES

30 U.S.C. § 188(b)(1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

A junior oil and gas lease offer is properly rejected when the senior offer subsequently is accepted and the lease is properly issued.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

The Secretary's policy against appealing the rejection of oil and gas lease offers to the Interior Board of Land Appeals separately from an appeal of the decision to issue conveyance, confers on the Alaska Native Claims Appeal Board exclusive jurisdiction over decisions rejecting noncompetitive oil and gas lease offers because of conflicts with land selections by Native Corporations under ANCSA.

Appeal of Jerry S. Roach, 2 ANCAB 277 (Jan. 26, 1978)

Appeals of Ethyl D. and Charles J. Clasby, Ruth Carpenter, et al., & Mary Francis Antweil, 2 ANCAB 302 (Feb. 21, 1978)

Appeal of Clifford C. Burglin, 3 ANCAB 37 (July 3, 1978)

Where it is first alleged on appeal that a first-drawn simultaneous oil and gas entry card has been rejected in order for the lease to be awarded to the offeree first drawn in a prior drawing, which prior drawing was void because of an omitted entry card, but the record as to the second drawing is incomplete and an affected party has not been given opportunity to participate, the case may be remanded for augmentation

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

of the record and initial consideration by Bureau of Land Management.

W. J. Langley, 34 IBLA 213 (Mar. 27, 1978)

An offer to lease for oil and gas is properly rejected where payment for the first year's advance rental is not received in the appropriate office of the Bureau of Land Management within 15 days after a Notice of Rental Due is received by the offeror pursuant to 43 CFR 3112.4-1.

Susan Dawson, 35 IBLA 123 (May 15, 1978)

Noncompetitive oil and gas leases are issued for primary terms of 10 years. Unless one of the statutory grounds for extension is established, such leases expire by operation of law at the end of their primary term.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

PRODUCTION

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a pro tanto cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978) 85 I.D. 347

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

Webb Resources, Inc., 38 IBLA 330 (Dec. 19, 1978)

REINSTATEMENT

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Severe winter weather and other circumstances which prevent the lessee from mailing the rental payment in a timely fashion constitute such a factor which renders the failure to pay the rental timely justifiable.

Genevieve C. Aabye, 33 IBLA 285 (Jan. 5, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment considering the distance involved. Allowing 1 day for delivery demonstrates lack of reasonable diligence.

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Failure to make payment of the annual rental on time is justifiable when owing to factors ordinarily outside the lessee's control the reasonable diligence test cannot be met. Natural disasters or the physical condition of the lessee or members of the lessee's immediate family, will justify late payment where they are the proximate cause of the late payment. Ignorance of the law, a pleasure or business trip, or disregard of regular mail collection schedules will not justify late payment.

Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified because it results from his misplacing the courtesy notice that rental is due.

Where a lessee presents no evidence that illnesses of his family members were so disruptive as to prevent him from carrying on his employment and other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by these illnesses.

Albert R. Fairfield, 34 IBLA 132 (Mar. 8, 1978)

Reinstatement of an oil and gas lease terminated by operation of law may be allowed only where the lessee can establish to the satisfaction of the Secretary of the Interior that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). When the only "payment" tendered timely consists of an unsigned check, it is not sufficient to satisfy the exculpatory standards of the reinstatement law and regulations.

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Where the lessee has gone on a trip intending to return by mid-month but is delayed by the necessity of caring for an old and ill friend whom he visited, so that he does not return until the first of the next month, the anniversary date of the lease, his failure to pay the rental timely is justifiable and the lease is to be reinstated.

C. H. Winters, 34 IBLA 350 (Apr. 26, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Failure to pay oil and gas lease rental timely may be justifiable where it was caused by factors outside the lessee's control which were the proximate cause of the late payment. A lessee's head injuries requiring hospitalization during the month before the anniversary date of the lease constitutes proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

Hubert W. Scudder, 35 IBLA 58 (May 10, 1978)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment on the day it is due does not meet the reasonable diligence requirement.

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, simple forgetfulness or inadvertence are not justifiable excuses for delay in making the rental payment.

Jones K. Mullinax, 35 IBLA 73 (May 12, 1978)

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other things, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee. Mailing the rental payment after the due date does not constitute reasonable diligence. An automobile accident occurring 25 days before the rental was due, is not a justifiable reason for reinstating the lease where it is not shown that its occurrence prevented the lessee from making timely payment. Reliance on receipt of a courtesy notice does not justify failure to pay rental timely.

Emma Pace, 35 IBLA 143 (May 22, 1978)

A Federal oil and gas lease reinstatement petition is properly denied where the petitioner avers merely that she mailed a rental check to the proper office of the Bureau of Land Management well before the anniversary date of the lease, and no evidence of this attempted payment, other than petitioner's statement, appears in the record.

Emma Sabsevitz, 35 IBLA 177 (May 23, 1978)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Apostolos Paliombeis, 35 IBLA 180 (May 23, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease erroneously canceled, because under 43 CFR 3112.1-1 land in canceled leases is subject to the filing of new noncompetitive lease offers only in accordance with simultaneous filing procedures.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

Under 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1970) if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee files his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank, the lessee has not exercised reasonable diligence. Failure to pay rental timely may be justifiable where it is caused by factors outside the lessee's control which were the proximate cause of the failure. Where the lessee provides no evidence or circumstances of an alleged unaccountable delay in the electronic transfer of funds from one bank to another which resulted in the lessee's rental check being dishonored, there is no basis for reinstatement of the lease.

Don C. Wiley, 35 IBLA 302 (June 2, 1978)

A lessee requesting reinstatement of an oil and gas lease terminated for failure to pay rental timely must show that he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail in order to demonstrate reasonable diligence under 30 U.S.C. § 188(c) (1970).

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse requiring reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record which results in the courtesy

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

notice's arriving late does not relieve the lessee from the obligation to pay rental timely.

Gilbert Mark Castillo, 36 IBLA 32 (June 27, 1978)

An oil and gas lease which has terminated automatically by operation of law for failure to pay rental timely can be reinstated only if, among other things, the failure to pay timely was not due to a lack of reasonable diligence or was justifiable.

In most cases, the date of the postmark on the envelope containing an oil and gas lease rental payment is deemed the date the payment was mailed. A contention that the payment was deposited in the mail prior to the postmark date must be supported by satisfactory evidence in order to rebut this inference from the postmark date.

Harpel Petroleum Corp., 36 IBLA 39 (June 27, 1978)

When an oil and gas lease terminates automatically by operation of law because the annual rental was not paid on or before the anniversary date, the lessee must show, among other things, that the failure to pay rental timely was not due to a lack of reasonable diligence or that there was a justifiable excuse for the delay in order to have the lease reinstated. Making oil and gas lease rental payments 19 days after they are due does not constitute reasonable diligence.

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must generally show the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. The following are not ordinarily justifiable excuses: (1) reliance on receipt of a courtesy notice of rental; (2) selling a house and moving to another; (3) failure to show a causal link between the illness of lessee's friend and the failure to pay timely.

Frederick C. Farrington, George M. Hoffman, 36 IBLA 70 (June 30, 1978)

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated upon a satisfactory showing that, among other things, the failure to pay the rental on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Generally, mailing the payment the day before it is due does not constitute reasonable diligence. A prolonged business trip will generally not constitute a justifiable excuse for the late payment.

J. R. Oil Corp., 36 IBLA 81 (July 12, 1978)

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where the death of a lessee's father occurs on Feb. 28, the rent is mailed no earlier than Feb. 28, and the rent is due and payable on Mar. 1, the requisite proximity and causality to justify the delay in payment is not demonstrated.

Hubert W. Scudder, Eileen Scudder, 36 IBLA 191 (Aug. 3, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment considering the distance involved. Where a letter is mailed on Feb. 25 from Windom, Minnesota, to Cheyenne, Wyoming, where it is due on Mar. 1, reasonable diligence has been exercised.

John D. Holt, 36 IBLA 257 (Aug. 15, 1978)

The postmark date on a letter bearing payments of annual rental on oil and gas leases will be deemed to be the date of mailing in the absence of satisfactory evidence corroborating the lessee's assertion that the payments were mailed before the postmark date.

Mailing payments of annual rental on oil and gas leases on Sunday in New York City 3 days before they are due in Salt Lake City, Utah, does not constitute a reasonably diligent attempt to pay the rental in a timely manner, in the absence of a clear showing that the payor had good cause to believe that the letter would be collected from the mailbox that same day.

Daniel Ashley Jenks, 36 IBLA 268 (Aug. 17, 1978)

While an oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated under 30 U.S.C. § 188(c) (1970), if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence, generally forgetfulness is not a justifiable excuse for delay in making the rental payment, and mailing the payment after the due date does not constitute reasonable diligence.

Gent Davis, 36 IBLA 311 (Aug. 21, 1978)

An oil and gas lease terminated by operation of law for failure to pay advance rental timely will be reinstated when lessee shows that failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence in that payment was mailed in California 6 days before due in Wyoming State Office.

Mercedes M. Peratt, 36 IBLA 331 (Aug. 28, 1978)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment either on the day before it is due, or after it is due, does not meet the reasonable diligence requirement.

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must show that the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. Negligence of an employee in making timely rental payments and subsequent false statements to her employer that timely payments were made does not relieve the employer from responsibility to verify the employee's action and to make timely payment.

Ram Petroleums, Inc., & Ramoco, Inc., 37 IBLA 184 (Oct. 11, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days after the due date.

Susan Krammes Sammis, 37 IBLA 269 (Oct. 19, 1978)

An oil and gas lease terminated by operation of law for failure to pay rental timely may be reinstated only where, among other things, it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Mailing a properly identified rental check after the due date does not constitute reasonable diligence, nor is there justification for the late payment because an unidentified check was received by BLM prior to the due date but returned for identification of the account to be credited.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. A number of factors caused by appellant's inadvertence, negligence, or lack of communication with its assignor, which combined to cause late payment of the rental do not justify failure to make timely payment.

Placid Oil Co., 38 IBLA 115 (Nov. 20, 1978)

A lessee's forgetfulness and inadvertence are not justifiable excuses for failure to pay the annual rental on or before the anniversary date of the oil and gas lease. Nor does mailing payment 4 days after the due date constitute reasonable diligence. The timeliness of filing Federal tax returns and payments and of making rental payments on oil and gas leases are governed by different statutes and regulations and are not the same.

Fred Pupcheck, 38 IBLA 275 (Dec. 13, 1978)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

The inadvertent error of a person entrusted to mail payments for an oil and gas lease is not a justifiable excuse for delay in making the payment to warrant reinstatement of a terminated lease.

The absence of a lessee on vacation does not justify a failure to make timely rental payment.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse diligence.

Ronald C. and Mary A. Hill, 38 IBLA 315 (Dec. 19, 1978)

RELINQUISHMENTS

An application for assignment of an undivided partial interest in an oil and gas lease is properly approved by BLM effective the first day of the lease month following the date of filing of the application. In the interim between the filing of the application and the effective date of the assignment, the prospective assignor remains the sole lessee, and, as such, is the only person who may relinquish rights under the lease.

A document expressly relinquishing all rights to an oil and gas lease, signed by the sole lessee, may not be disregarded unless the lessee or one with clear authority to act on his behalf revokes the relinquishment in advance of its filing.

Sol Singer, Gretchen Capital, Ltd., 35 IBLA 361 (June 23, 1978)

RENEWALS

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

OIL AND GAS LEASES--Continued

RENTALS

30 U.S.C. § 188(b) (1970), and its implementing regulation 43 CFR 3108.2-1, requiring a notice of deficiency on a form approved by the director apply only to rental payments due on the anniversary dates of noncompetitive oil and gas leases, and are inapplicable to deficient initial rental payments for noncompetitive oil and gas lease offers.

Where the Bureau of Land Management notifies an oil and gas lessee of a deficiency in initial rental and the deficiency is not paid to the Bureau within the time prescribed, but is paid some 5 months later, the delay being ascribed to "oversight" the lateness of the payment will not be excused and the cancellation of the lease for failure to pay the rental timely is properly sustained.

Evelyn Chambers, 33 IBLA 271 (Jan. 5, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

When BLM sends a notice of an advance rental obligation to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such notice is returned by the post office, the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2.

An undocumented and unsupported assertion by an oil and gas lease offeror that his agents made a timely tender of advance rental payment will be disregarded on appeal where BLM records indicate that no such tender was made within the period allowed for payment of the advance rental.

Charles M. Brady, 33 IBLA 375 (Jan. 25, 1978)

Sec. 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1970), providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j) (1970), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

Payment of the annual rental on an oil and gas lease is not made until a proper form of remittance is received by the appropriate office of the Bureau of Land Management.

Lloyd M. and Adelheid A. Patterson, 34 IBLA 68 (Feb. 22, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Annual rental payments on oil and gas leases are sent to depositories designated by the Secretary of the Treasury if their location permits the deposit to be hand carried; otherwise, the deposits are mailed to the Denver Branch of the Kansas City Federal Reserve Bank. Washington, D.C., offices of the Bureau of Land Management may send deposits to the Cash Division of the Treasury Department. All checks drawn on foreign banks or foreign branches of United States banks must be sent for deposit to the Cash Division of the Treasury Department.

An oil and gas lease rental payment check returned to the Bureau of Land Management because a Federal Reserve Bank will not accept for collection checks drawn on foreign banks, but which could be collected through the Cash Division of the Treasury Department and would be honored by the drawee bank, is not "uncollectible."

Pipeline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978) 85 I.D. 70

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

A lessee's failure to make timely payment of annual rental on an oil and gas lease is not justified because it results from his misplacing the courtesy notice that rental is due.

Where a lessee presents no evidence that illnesses of his family members were so disruptive as to prevent him from carrying on his employment and other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by these illnesses.

Albert R. Fairfield, 34 IBLA 132 (Mar. 8, 1978)

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subseguent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Tipperary Oil and Gas Corp., 35 IBLA 120 (May 15, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record resulting in the lessee not receiving the courtesy notice does not relieve the lessee from the obligation to pay rental timely.

Apostolos Paliombeis, 35 IBLA 180 (May 23, 1978)

"Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification may not be avoided by allegations that delivery was delayed by the postal service, as the rule is that the postal authorities are the agents of the sender in such cases.

Where BLM records show that the first-drawn applicant for an oil and gas lease paid his rental 1 day late, and is therefore disqualified, there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

Where a first-drawn oil and gas applicant offers evidence to show that his first year's advance rental was mailed sufficiently in advance so that, even if delayed, it would have arrived within the prescribed time, a legal presumption is raised that the payment was timely delivered.

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches eo instante.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State office can credit the payment to the proper lease account. However, where an appellant demonstrates that the rental money was received timely by the appropriate State Office, and the evidence indicates that the lessee subsequently gave timely and proper instructions as to its application, the lease is properly deemed to have not terminated.

Pacific Transmission Supply Co., 35 IBLA 297 (June 2, 1978)

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

An oil and gas lease terminated for nonpayment of rent may be reinstated under 30 U.S.C. § 188(c) (1970) if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee files his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank, the lessee has not exercised reasonable diligence. Failure to pay rental timely may be justifiable where it is caused by factors outside the lessee's control which were the proximate cause of the failure. Where the lessee provides no evidence or circumstances of an alleged unaccountable delay in the electronic transfer of funds from one bank to another which resulted in the lessee's rental check being dishonored, there is no basis for reinstatement of the lease.

Don C. Wiley, 35 IBLA 302 (June 2, 1978)

An oil and gas offer which is accompanied by advance rental of $0.50 per acre may not be rejected as not including sufficient advance rental, per 43 CFR 3103.3-2, 3111.1-1(d) and (e)(1), if the regulation raising the rental to $1 is not in effect when the offer was filed.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse requiring reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record which results in the courtesy notice's arriving late does not relieve the lessee from the obligation to pay rental timely.

Gilbert Mark Castillo, 36 IBLA 32 (June 27, 1978)

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless

OIL AND GAS LEASES--Continued

RENTALS--Continued

each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

Frederick C. Farrington, George M. Hoffman, 36 IBLA 70 (June 30, 1978)

An oil and gas lease which has terminated for failure to pay rental timely may be reinstated upon a satisfactory showing that, among other things, the failure to pay the rental on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Generally, mailing the payment the day before it is due does not constitute reasonable diligence. A prolonged business trip will generally not constitute a justifiable excuse for the late payment.

J. R. Oil Corp., 36 IBLA 81 (July 12, 1978)

The automatic termination provision in sec. 31 of the Mineral Leasing Act, as amended, does not apply to a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease.

American Resources Management Corp., 36 IBLA 157 (July 31, 1978)

Where the official record of an oil and gas lease offer contains no indication either of when BLM received payment of first-year rental on the lease or of when BLM believes it received this payment, and where the only indication of when the payment was made is a photocopy, submitted on appeal, of a portion of an unidentified, undated receipt which does not bear either the offeror's name or the serial number of his offer or the control number of the document, and which is not included in the official record, BLM's decision rejecting the offer under 43 CFR 3112.4-1 for failure to make this payment within 15 days of the offeror's receipt of notice that the rental was due will be reversed.

Willis L. Lawton, 36 IBLA 178 (July 31, 1978)

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due is properly disqualified as an offeror.

Gavino San Diego, 36 IBLA 300 (Aug. 21, 1978)

An oil and gas lessee is properly required to pay the higher rental prescribed by duly promulgated regulations of the Department where all or part of the lands in the lease have been included within the known geologic structure of a producing oil or gas field. However, where a discovery is made on the leased lands, at the expiration of that lease year the lease goes on a minimum royalty basis. 43 CFR 3103.3-5.

Andrew W. Brainerd, 36 IBLA 304 (Aug. 21, 1978)

An oil and gas lease terminated by operation of law for failure to pay advance rental timely will be reinstated when lessee shows that failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence in that payment was mailed in California 6 days before due in Wyoming State Office.

Mercedes M. Peratt, 36 IBLA 331 (Aug. 28, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A rental check for an oil and gas offer need not be signed necessarily by the offeror.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

Where BLM sends by certified mail a notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental is due within 15 days of receipt of the notice, and the letter is returned to BLM marked "moved left no address" by the post office, and it is established that the nondelivery by the post office was erroneous, the rejection of the lease offer will be set aside and the notice will not be considered to have been served on the offeror pursuant to 43 CFR 1810.2(b).

Joan L. Harris and Jonathan T. Ames, 37 IBLA 96 (Sept. 25, 1978)

The rent for oil and gas lease rights obtained in a simultaneous oil and gas lease drawing must be received in the proper office of the Bureau of Land Management within 15 days from the date of receipt of notice that such payment is due. Where there is no proof that service of the notice that payment is due was made upon offeror more than 15 days before the payment is received by the proper office of BLM, such payment will be deemed as timely made.

Kathleen A. Rubenstein, 37 IBLA 117 (Sept. 29, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

A lessee's forgetfulness and inadvertence are not justifiable excuses for failure to pay the annual rental on or before the anniversary date of the oil and gas lease. Nor does mailing payment 4 days after the due date constitute reasonable diligence. The timeliness of filing Federal tax returns and payments and of making rental payments on oil and gas leases are governed by different statutes and regulations and are not the same.

Fred Pupcheck, 38 IBLA 275 (Dec. 13, 1978)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after Feb. 1977, the increased rate is applicable to leases issued subsequent to that date where the over-the-counter offer was filed prior to effective date of the regulation.

Phillips Petroleum Co., 38 IBLA 344 (Dec. 22, 1978)

RIGHTS-OF-WAY LEASES

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

ROYALTIES

Where a unit agreement provides that royalty on production shall be paid at the rate set forth in the individual lease terms, and the lease provides that no royalty shall be due on gas used for production purposes, it is proper to deduct the amount of gas used for production purposes on a lease from the gross allocation of gas to that lease before making the computation of royalty due to the United States.

Amoco Production Co. (On Reconsideration), 35 IBLA 43 (May 9, 1978)

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

Webb Resources, Inc., 38 IBLA 330 (Dec. 19, 1978)

STIPULATIONS

The Bureau of Land Management may require the execution of special stipulations, including a no-surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Robert L. Healy, 35 IBLA 66 (May 12, 1978)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

A stipulation prohibiting drilling and storage of oil on a portion of an oil and gas lease of 160 acres in order to protect an area of a river which is in a study section of the Wild and Scenic Rivers Act is reasonable, without consideration of other factors, where it leaves three-quarters of the lease open to regular activity.

Duncan Miller, 35 IBLA 108 (May 15, 1978)

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

SUSPENSIONS

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration. The filing of an application for permit to drill and Geological Survey's delay in acting on the application do not create a de facto suspension of the lease.

Jones-O'Brien, Inc., 1 SEC. 13 (Apr. 21, 1978)
85 I.D. 89

TERMINATION

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

Pipeline Petroleum Corp., 34 IBLA 73 (Feb. 22, 1978)
85 I.D. 70

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration. The filing of an application for permit to drill and Geological Survey's delay in acting on the application do not create a de facto suspension of the lease.

Jones-O'Brien, Inc., 1 SEC. 13 (Apr. 21, 1978)
85 I.D. 89

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence

OIL AND GAS LEASES--Continued

TERMINATION--Continued

that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 26, 1978)

It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State office can credit the payment to the proper lease account. However, where an appellant demonstrates that the rental money was received timely by the appropriate State Office, and the evidence indicates that the lessee subsequently gave timely and proper instructions as to its application, the lease is properly deemed to have not terminated.

Pacific Transmission Supply Co., 35 IBLA 297 (June 2, 1978)

An oil and gas lease terminates automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank on which it is drawn. However, if a lessee provides adequate evidence, such as an admission by a bank official, that the bank erroneously dishonored the check, the error of the bank may not vitiate the otherwise proper payment of rental to BLM.

Don C. Wiley, 35 IBLA 302 (June 2, 1978)

Absent an affirmative billing error by BLM, a Federal oil and gas lessee is entitled to a Notice of Deficiency in regard to advance rental only where such lessee has made timely payment of the lease rental and the payment tendered is deficient by not more than $10 or 5 percent of the total amount due, whichever is greater.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

A purported assignment of an oil and gas lease does not relieve the lessee of record of the responsibility to make timely payment of all rentals until such assignment is formally approved by BLM.

Great Basins Petroleum Co., 36 IBLA 42 (June 30, 1978)

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. § 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

Frederick C. Farrington, George M. Hoffman, 36 IBLA 70 (June 30, 1978)

The automatic termination provision in sec. 31 of the Mineral Leasing Act, as amended, does not apply to a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease.

American Resources Management Corp., 36 IBLA 157 (July 31, 1978)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

An oil and gas lease expires at the end of its primary term where there has not been compliance with any of the provisions of the Mineral Leasing Act under which a further extension of the lease may be granted.

Erna M. Groth, 37 IBLA 224 (Oct. 16, 1978)

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

An oil and gas lease terminated by operation of law for failure to pay rental timely may be reinstated only where, among other things, it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Mailing a properly identified rental check after the due date does not constitute reasonable diligence, nor is there justification for the late payment because an unidentified check was received by BLM prior to the due date but returned for identification of the account to be credited.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse diligence.

Ronald C. and Mary A. Hill, 38 IBLA 315 (Dec. 19, 1978)

An oil and gas lease issued for a primary term of 10 years on which there is no production will expire by its own terms where the lessee has not commenced drilling operations on the leasehold at the end of the term, and payment of compensatory royalty will not extend the lease where there has been no showing that the leasehold is subject to drainage from wells on an adjoining property.

Webb Resources, Inc., 38 IBLA 330 (Dec. 19, 1978)

TWENTY-YEAR LEASES

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS

A 20-year oil and gas lease which has been renewed for successive 10-year periods, and which at the time of expiration of a 10-year period is committed to an approved unit plan of development, is not entitled to another 10-year renewal, but is extended pursuant to 30 U.S.C. § 226(j) (1970).

Texaco, Inc., 33 IBLA 296 (Jan. 10, 1978)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 26, 1978)

The amendment to 30 U.S.C. § 226(j) (1970) by the Mineral Leasing Act Amendments of 1960 does not require segregation into separate leases of any lease committed before July 29, 1954, to a unit agreement which covers land within and land outside the area covered by the plan.

Where a unit agreement provides that royalty on production shall be paid at the rate set forth in the individual lease terms, and the lease provides that no royalty shall be due on gas used for production purposes, it is proper to deduct the amount of gas used for production purposes on a lease from the gross allocation of gas to that lease before making the computation of royalty due to the United States.

Amoco Production Co. (On Reconsideration), 35 IBLA 43 (May 9, 1978)

Where only a portion of an oil and gas lease is committed to an approved unit agreement sec. 17(j) of the Mineral Leasing Act, as amended, mandates the segregation of the noncommitted lands into a separate lease.

American Resources Management Corp., 36 IBLA 157 (July 31, 1978)

Before issuance of a competitive oil and gas lease for land within the area of an approved unit agreement, it is proper to require the successful bidder to file evidence that he has entered into an agreement with the unit operator for development of the land in the lease under the terms and provisions of the approved unit agreement or to file a statement giving satisfactory reasons for failure to enter such agreement.

Where high bidder for a competitive oil and gas lease within the area of an approved unit agreement fails to file evidence showing joinder to the unit agreement or to submit satisfactory reasons for failure to enter into agreement with the unit operator, it is proper to reject his bid and to refund the bonus payment tendered with the bid.

Gordon H. Barrows, 36 IBLA 160 (July 31, 1978)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

An oil and gas lease is extended by operation of law for 2 years beyond the expiration of its primary term when actual drilling operations were commenced on the lease (or for the lease under a unit plan) prior to the expiration of the primary term and such operations are being diligently prosecuted on the expiration date.

A unitized oil and gas lease is entitled to an extension for 2 years where production testing operations are being conducted on the unit well on the expiration date of the lease. Such testing qualifies as "actual drilling operations" as defined by 43 CFR 3107.2-1 which includes not only the physical drilling of a well, but the testing, completing, or equipping of such well for production of oil or gas.

Shell Oil Co., 36 IBLA 253 (Aug. 15, 1978)

Where a Federal oil and gas lessee commits a portion of his lease to a proposed unit agreement, thereafter assigns all that committed portion to another, which assignment is approved, and subsequently the proposed unit is approved by the Geological Survey, the lessee is not entitled to a 2-year extension under 30 U.S.C. § 226(j) (1970), for the retained portion of the lease.

F. M. Tully, 37 IBLA 62 (Sept. 18, 1978)

WELL CAPABLE OF PRODUCTION

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Manhattan Resources, Inc., 34 IBLA 346 (Apr. 26, 1978)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases--if included in this Index.)

OIL AND GAS LEASES

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a pro tanto cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978) 85 I.D. 347

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OPERATING PROCEDURES

The Department of the Interior has the authority to issue orders to oil and gas lessees to protect all of the natural resources of the Continental Shelf. An order which requires lessees to shut in wells during welding or burning operations will be sustained on appeal as not being arbitrary or unjustified where the record shows that a number of companies had followed the practice even when it was not required, where the order is not so prohibitive as to effect a pro tanto cancellation of the lease, and where departures from the order may be granted in certain situations.

Exxon Corp., 36 IBLA 185 (Aug. 1, 1978) 85 I.D. 347

PATENTS OF PUBLIC LANDS

GENERALLY

Where an entryman has mistakenly applied for and received a patent on one parcel of land which was not the land he actually occupied, he is not entitled to receive a patent on the land actually occupied by virtue of the fact that the statutes of limitation on the issuance and cancellation of patents has run.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

Issuance of a certificate of allotment vests full title to the parcel concerned in the allottee, notwithstanding the fact that the Department retains the right to approve a subsequent sale of the parcel by the allottee.

State of Alaska, 35 IBLA 140 (May 22, 1978)

"An Act granting public lands to the town of Silverton, Colorado, for public park purposes" (43 Stat. 980, Feb. 25, 1925).

The above Act and the patent issued in accordance therewith require that the lands granted be used for public park purposes only, and the town's attempt to lease a portion of the lands for the construction of camper sites does not violate the Act and patent since the use of a limited part of the patented land for camper sites is consistent with recreational and public park purposes.

Town of Silverton, 35 IBLA 183 (May 23, 1978)
85 I.D. 140

Where a patent has been issued under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. § 869 et seq. (1970), pursuant to a plan of development, and that plan is modified with the consent of the Bureau of Land Management, the failure to comply with the original plan is excused.

The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied.

Even if there were a mistake in the issuance of a patent, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where: (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires; or (4) significant equitable considerations are involved.

Where more than 6 years have passed after the issuance of a patent, suit by the United States to vacate and

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

annul the patent cannot be sustained, 43 U.S.C. § 1166 (1970), absent a positive showing of fraud practiced upon the United States.

H. B. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

A grantee's transfer of the property and its subsequent use for a purpose (big game guiding service) other than the one described in the patent (mission parsonage and chapel) without consent of Department of the Interior triggers reversion of the land to the United States.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

AMENDMENTS

Prior to the enactment of sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior's authority to correct patents could not be exercised to divest the Government's title to land that was withdrawn or reserved at the time of the mistaken entry. Whether sec. 316 authorizes amendment of a patent in such situations is to be determined in the first instance by the BLM.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

EFFECT

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a second survey affect property rights acquired under an official survey.

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land.

State of Alaska, 35 IBLA 140 (May 22, 1978)

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

H. B. Baldwin, 37 IBLA 215 (Oct. 12, 1978)

The effect of the issuance of a patent is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land.

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

RESERVATIONS

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 et seq. (1970), was not generally intended to give the grantee the right to use the land for mineral development and mineral development was to proceed only under the mineral laws.

"Ejusdem generis." The ejusdem generis rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Gravel in a valuable deposit is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded

PAYMENTS--Continued

GENERALLY--Continued

A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law and not by the action of any official if the annual rental is not paid on or before the due date. Submission of a rental check without identifying the lease number precluded the Bureau of Land Management from accepting the check as payment for the lease, and a lease is properly held to terminate in the absence of a timely identified payment of the rental.

S. Delos Champaign, 37 IBLA 377 (Nov. 6, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

Benjamin T. Franklin, 38 IBLA 291 (Dec. 14, 1978)

Where an offer is drawn No. 1 for a tract consisting of 39.97 acres, BLM requests payment specifically of $40 advance rental, and the offeror remits $39.97 within the 15-day period spelled out in 43 CFR 3112.4-1, the submittal of $39.97 does not constitute satisfactory payment within the ambit of that regulation.

Milton Knoll, 38 IBLA 319 (Dec. 19, 1978)

POTASSIUM LEASES AND PERMITS

GENERALLY

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the

POTASSIUM LEASES AND PERMITS--Continued

GENERALLY--Continued

leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

PRACTICE BEFORE THE DEPARTMENT
(See also Rules of Practice--if included in this Index.)

PERSONS QUALIFIED TO PRACTICE

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

PRESIDENT OF THE UNITED STATES

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of

PRESIDENT OF THE UNITED STATES--Continued

question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

PRIVATE EXCHANGES

GENERALLY

The appraised values of offered and selected lands in a land exchange application made pursuant to the Federal Land Policy and Management Act of 1976 are properly determined where such values are set in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.

Prior to issuance of a patent, an exchange application is nothing more than a proposal under which no contract right arises and no equitable title vests.

Paul Kellerblock, 38 IBLA 160 (Dec. 5, 1978)

PUBLIC LANDS
(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

ADMINISTRATION

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

DISPOSALS OF

Generally

"An Act granting public lands to the town of Silverton, Colorado, for public park purposes" (43 Stat. 980, Feb. 25, 1925).

The above Act and the patent issued in accordance therewith require that the lands granted be used for public park purposes only, and the town's attempt to lease a portion of the lands for the construction of camper sites does not violate the Act and patent since the use of a limited part of the patented land for camper sites is consistent with recreational and public park purposes.

Town of Silverton, 35 IBLA 183 (May 23, 1978)
85 I.D. 140

JURISDICTION OVER

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

PUBLIC LANDS--Continued

LEASES AND PERMITS

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

The boundary of an oil and gas lease covering lands riparian to a navigable river is the meander line indicated on the official plat of survey and not the waterline. Thus, lands accreted to the leased lands may be separately leased.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

Where, at the end of its term, a mineral lease affecting lands within the Lake Mead Recreation Area is not in good standing, an application for renewal thereof for an additional 5 years is properly denied. Where the lessee fails to develop the lease property diligently during the term of the lease and does not fall within an exception to this requirement, the lease is not in good standing and may not be extended.

Audrine G. Knight, 36 IBLA 53 (June 30, 1978)

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded with instructions to reconsider whether the leasing of lands not in excepted areas would be appropriate.

D. L. Percell, 37 IBLA 272 (Oct. 20, 1978)

RIPARIAN RIGHTS

Unsurveyed fast lands, formed by accretion to public land or to lands patented with an oil and gas reservation, riparian to a navigable river and lying within the meander lines of that navigable river, as recorded on the official plat, may be leased provided that a proper offer is received and the other relevant conditions precedent to leasing are met.

Federal law determines the legal characterization of accretions, avulsions, and relictions to land riparian to navigable bodies of water, where title to the land or reserved interests in the land remains in the United States.

Federal law follows the common law in distinguishing between accretion and avulsion. Accretion is the gradual and imperceptible addition of land to adjacent riparian land. Title to accreted lands inures to the uplands owner. Avulsion is the sudden perceptible shifting of the course of a river or stream. In the case of avulsion, title to the avulsed land is not lost by its former owner nor does it accrue to the owner of what was formerly the opposite bank.

David A. Provinse, 35 IBLA 221 (May 26, 1978)
85 I.D. 154

PUBLIC LANDS--Continued

SPECIAL USE PERMITS

The issuance of a use permit is discretionary, and BLM may reject an application for such a permit where Bureau studies indicate that the uses proposed are inconsistent with the agency's objectives for the lands involved.

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Hedell, 37 IBLA 22 (Sept. 12, 1978)

A special land use permit is revocable in the discretion of the authorized officer at anytime upon notice to the permittee. Such permit is properly canceled when a millsite claimant, having located a claim on the same land included in the permit, requests revocation of the permit in order to facilitate construction on tailings pond expansion necessary to meet Federal and State requirements.

U.S. Energy Corp., 38 IBLA 110 (Nov. 20, 1978)

PUBLIC SALES

GENERALLY

It is a proper exercise of discretion under the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management to refuse to process and to reject applications for public sale pending on the date of the Act, even though it will continue to process bids and preference-right applications for a sale held prior to the Act.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. $$ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

APPLICATIONS

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

BLM has discretion to reject public sale applications pursuant to R.S. 2455, repealed by the Federal Land Policy and Management Act of 1976, effective Oct. 21, 1976, where the sale has not been held by this date. The filing of a public sale application creates no rights under sec. 701(a) of FLPMA which prevent BLM from exercising its discretion to dismiss the application.

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

PUBLIC SALES--Continued

APPLICATIONS--Continued

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. $$ 1431-1435 (1970), is properly rejected when the Geological Survey reports that such lands are underlain with coal, and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application because conveyance of the surface rights could allow the surface owner, pursuant to the Surface Mining Control and Reclamation Act of 1977, to prevent strip mining of the underlying coal by withholding his consent to mine.

A determination by the United States Geological Survey that certain lands in an application for sale under the Unintentional Trespass Act, 43 U.S.C. $$ 1431-1435 (1970), are underlain with coal, and that sale of the surface rights would interfere with the operation of the Mineral Leasing Act of 1920, will not be disturbed in the absence of a clear showing by the applicant that the determination was improperly made.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

SALES UNDER SPECIAL STATUTES

An application to purchase public land filed pursuant to the Unintentional Trespass Act, 43 U.S.C. $$ 1431-1435 (1970), is properly rejected when the Geological Survey reports that such lands are underlain with coal, and that exercise of surface rights would unreasonably interfere with operations under the Mineral Leasing Act of 1920. In addition, the public interest dictates rejection of the application because conveyance of the surface rights could allow the surface owner, pursuant to the Surface Mining Control and Reclamation Act of 1977, to prevent strip mining of the underlying coal by withholding his consent to mine.

Mace Cox, 38 IBLA 340 (Dec. 20, 1978)

RAILROAD GRANT LANDS

Sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. $ 65(b) (1970), authorizes, rather than mandates, the issuance of patents to innocent purchasers for value of lands which did not pass to a railroad under a statutory grant because of their mineral character, the rights of any such innocent purchaser being dependent upon the conditions and limitations of the Act of Mar. 3, 1887, 43 U.S.C. $ 898 (1970).

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. $ 65(b) (1970) and 43 U.S.C. $ 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

RECLAMATION HOMESTEADS

GENERALLY

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes

RECLAMATION HOMESTEADS--Continued

GENERALLY--Continued

until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

RECLAMATION LANDS

GENERALLY

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

Where lands are receiving benefits from both an SRPA loan project and an ordinary reclamation project, general reclamation law, including residency and acreage limitations, apply to those lands.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

INCLUSION AND EXCLUSION OF WITHIN IRRIGATION DISTRICT

Sec. 9(e) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(e) (1970), does not give the Secretary any independent authority for entering water service contracts for areas except as separately authorized by Congress.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

RECLAMATION LANDS--Continued

IRRIGABLE LANDS

Certification that lands are irrigable is a separate and distinct process from authorizing a Bureau of Reclamation project and cannot be construed as authorization to serve lands in excess of those specifically authorized in the project act.

Westlands Water District -- Legal Questions, M-36901 (July 31, 1978) 85 I.D. 297

RECREATION AND PUBLIC PURPOSES ACT

A grantee's transfer of the property and its subsequent use for a purpose (big game guiding service) other than the one described in the patent (mission parsonage and chapel) without consent of Department of the Interior triggers reversion of the land to the United States.

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

REGULATIONS
(See also Administrative Procedure--if included in this Index.)

GENERALLY

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. Where land has been included in a designated primitive area in derogation of the criteria established by regulation, the designation must be canceled as to such land.

Keith S. Rush, 36 IBLA 76 (July 12, 1978)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Donald H. Little, 37 IBLA 1 (Sept. 6, 1978)

Dermot S. McGlinchey, 38 IBLA 211 (Dec. 6, 1978)

REGULATIONS--Continued

GENERALLY--Continued

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. An application for a right-of-way pursuant to 43 CFR 2802.1-1 which does not comply with the clear and unequivocal requirements of the regulation must be rejected.

Personnel of BLM are not required to alter, modify, or correct an application for a right-of-way in order to conform such application to the requirements of the regulation under which it was filed.

Beehive Telephone Co., Inc., 38 IBLA 80 (Nov. 9, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. A grazing lease is properly canceled where the lessee fails to pay the rental pursuant to 43 CFR 4125.1-1(h) and 4125.1-1(m)(3). The Boards of Appeal of this Department have no authority to declare a Secretary's regulation invalid.

Sombrero Ranches, Inc., 38 IBLA 327 (Dec. 19, 1978)

As an amendment to the Alaska Native Claims Settlement Act, P.L. 94-204 (89 Stat. 1145, 43 U.S.C. § 1611 (Supp. IV, 1974)), is subject to both the provisions of ANCSA and the regulations promulgated to implement ANCSA, unless such provisions or regulations conflict with, or are specifically excepted or preempted in the amendment.

Appeal of Cook Inlet Region, Inc., 3 ANCAB 111 (Dec. 27, 1978) 85 I.D. 462

APPLICABILITY

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

Jerry Chambers, 33 IBLA 323 (Jan. 16, 1978)

There is no estoppel applicable to the Department of the Interior where it has changed a clearly erroneous regulation to comport with an amendment to the oil and gas leasing laws enacted some 15 years previously. The Department is not precluded from correcting that which is "clearly erroneous."

Yates Petroleum Corp., 34 IBLA 7 (Feb. 8, 1978)

A regulation, amended in a manner that benefits a pending application for an oil and gas lease, may be applied to the pending application in the absence of intervening rights or public interest.

Repeal of regulations which prohibit leasing fractional interests to one who would own only a minority of operating rights in the leased property gives priority to an otherwise regular offer which would have had to be rejected under the former regulations, as of the effective date of the repeal, provided that no offers

REGULATIONS--Continued

APPLICABILITY--Continued

qualified under the former regulation have been received prior to repeal, and that the offer has not been rejected prior to repeal.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Where a regulation requiring reimbursement of certain costs incurred by the United States in the processing of right-of-way applications is promulgated, the cost reimbursement provision is applicable to an application filed prior to and pending on the effective date of the regulation.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Tipperary Oil and Gas Corp., 35 IBLA 120 (May 15, 1978)

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978) 85 I.D. 207

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite regulations may be applied in the disposition of Native townsite lands.

Nancy A. Delkittie, 35 IBLA 370 (June 23, 1978)

An oil and gas lessee is properly required to pay the higher rental prescribed by duly promulgated regulations of the Department where all or part of the lands in the lease have been included within the known geologic structure of a producing oil or gas field. However, where a discovery is made on the leased lands, at the expiration of that lease year the lease goes on a minimum royalty basis. 43 CFR 3103.3-5.

Andrew W. Brainerd, 36 IBLA 304 (Aug. 21, 1978)

A final Departmental appellate decision construing a regulation will be given immediate effect, and will not be applied with prospective effect only, unless the decision alters materially the interpretation given the

REGULATIONS--Continued

APPLICABILITY--Continued

regulation by earlier Departmental decisions or official published opinions, and unless the equitable benefit of the decision is not outweighed by ill effects of allowing a benefit in derogation of the regulation.

D. E. Pack (On Reconsideration), 38 IBLA 23 (Nov. 9, 1978) 85 I.D. 408

BINDING ON THE SECRETARY

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

FORCE AND EFFECT AS LAW

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

Wilfred Plomis, 34 IBLA 222 (Mar. 27, 1978)

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

Grace Cooley Coleman, Leota Ferrell, 35 IBLA 236 (May 26, 1978)

INTERPRETATION

Arizona Revised Statutes § 37-502, which provides for damages in civil actions for trespass on State lands, does not apply to cases involving right-of-way trespass on Federal lands located in Arizona.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them, or they should not be interpreted to deprive him of a preference right to a lease.

Where an offer for an oil and gas lease describes lands by reference only to the rectangular survey system, without reference to the fact that part of these unpatented lands are also within a mineral survey, the offer will be regarded as including the lands within the mineral survey if it is clear from the offer that the offeror so intended.

Bill J. Maddox, 34 IBLA 278 (Apr. 17, 1978)

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

REGULATIONS--Continued

INTERPRETATION--Continued

When a married woman signs her name, "Mrs. Hal McCarthy," as offeror on a drawing entry card oil and gas lease offer, and prints her full name "Geraldine M. McCarthy" on the face of the card, the card may not be rejected because she violated no regulation by signing the offer in that manner, and she followed the instructions on the face of the card by giving her first name and initial.

Geraldine M. McCarthy, 37 IBLA 323 (Oct. 25, 1978)

VALIDITY

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a regulation of this Department.

Donald E. Jordan, 35 IBLA 290 (June 2, 1978)

WAIVER

A past incorrect application of the law in adjudication of oil and gas lease offers is no authorization for failure to follow regulations in the case of an offer currently under adjudication.

David A. Provinse, 35 IBLA 217 (May 26, 1978)

The failure of a high bidder, in an upland competitive lease sale, to submit one-fifth of the amount bid with his bid in the proper form of remittance, may not be waived where the bidder submitted a sight draft, and thus retained control of the fund until presentment and final payment.

Mesa Petroleum Co., 37 IBLA 103 (Sept. 28, 1978)

REINSTATEMENT

GENERALLY

Reinstatement of an oil and gas lease terminated by operation of law may be allowed only where the lessee can establish to the satisfaction of the Secretary of the Interior that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). When the only "payment" tendered timely consists of an unsigned check, it is not sufficient to satisfy the exculpatory standards of the reinstatement law and regulations.

Auburn C. Hunsucker, 34 IBLA 316 (Apr. 24, 1978)

RES JUDICATA

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

RES JUDICATA--Continued

A request to reconsider a final decision of the Department rejecting applications for homestead entry is properly rejected in the absence of a showing of extraordinary circumstances. Except where compelling legal and equitable reasons for reconsideration are shown, the principle of res judicata and its counterpart, finality of administrative action, will bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Donald W. Coyer (Appellant), Alfred L. Easterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

RIGHTS-OF-WAY
(See also Indian Lands, Outer Continental Shelf Lands Act, Reclamation Lands--if included in this Index.)

GENERALLY

A communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to the periodic reappraisal under the terms of the specific grant and applicable regulations then in effect, 43 CFR 244.21(b) and (f) (1954).

Second party utilization of a communication site right-of-way granted on Sept. 2, 1959, pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is subject to BLM authorization under the governing regulation, 43 CFR 244.18(a) (1954).

James W. Smith, 34 IBLA 146 (Mar. 10, 1978)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Arizona Revised Statutes § 37-502, which provides for damages in civil actions for trespass on State lands, does not apply to cases involving right-of-way trespass on Federal lands located in Arizona.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

Where a regulation requiring reimbursement of certain costs incurred by the United States in the processing of right-of-way applications is promulgated, the cost reimbursement provision is applicable to an application filed prior to and pending on the effective date of the regulation.

Continental Telephone of California, 34 IBLA 374 (May 1, 1978)

An oil and gas lease offer for lands in a reservoir right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1970), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Where the official records of the Bureau of Land Management show a reservoir right-of-way affecting certain land, the oil and gas therein may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). This result follows even though the reservoir right-of-way may have been issued improperly or should have been terminated.

Republic Oil & Mining Co. and Margaret V. Coombs, 35 IBLA 212 (May 26, 1978)

A request for rent-exempt status for a right-of-way granted for telephone poles and lines pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1970), is properly denied where the terms of the grant clearly state that the grant is made in consideration of periodic rental payments and contains no authorization for rent-exempt status.

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978) 85 I.D. 186

Applications for rights-of-way on public lands pending on Oct. 22, 1976, are to be considered as applications under Title V of the Federal Land Policy and Management Act of 1976, but existing regulations will govern the administration of public lands to the extent practical until new regulations are promulgated.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. Where an appellant has raised sufficient doubt that the Bureau properly considered the highest and best use of a right-of-way in determining comparability of other sites as a basis for the use charges, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Where a grantee seeks renewal of a right-of-way for a communication site, the Bureau of Land Management should require an advance annual payment at the rate formerly charged until a new fair market value rate may be established by appraisal. In the absence of contrary directives, the guideline in 43 CFR 2802.1-7(e) should be applied to renewals of existing rights-of-way. Increased charges may not be imposed retroactively, but are only imposed by the authorized officer, after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

Interest may be imposed on use charges for right-of-way sites depending on considerations of fairness and equity. In the absence of contrary directives, interest may be imposed for occupancy of a site where use charges should have been imposed at the same rate as past permitted use. Also, interest may be imposed on increased charges due on an annual basis for the years prior to payment of such amount.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

Where, on appeal, a grantee of a right-of-way makes a substantial showing of error in the revision of the rental rate for use of the right-of-way, and where the State Office has not had an opportunity to consider the grantee's arguments, a decision dismissing a protest to the revised rental rate will be set aside and the case will be remanded in order to afford the State Office an opportunity to review its appraisal in light of the grantee's contentions.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

Alice Hays, 36 IBLA 313 (Aug. 23, 1978)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Hedell, 37 IBLA 22 (Sept. 12, 1978)

10 U.S.C. § 2669 (1976) authorized the Secretary of a military department to grant an easement for a right-of-way over land permanently withdrawn or reserved for the use of that department and other land under his control. This language was all-inclusive and permitted the Secretary of the Army to issue a revocable permit for a pipeline over land withdrawn for the use of the Army regardless of whether the withdrawal be permanent or temporary.

In the construction or interpretation of contracts, the primary purpose and guideline is the intention of the parties. A contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument. Individual words and phrases must be considered in connection with the rest of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and grants appellant a rental-free revocable permit to enter the "service location," for any purpose under the contract including use of the sites for installation, operation, and maintenance of the facilities, the contract can be interpreted as granting appellant a rental-free revocable permit for a right-of-way for a gas pipeline.

In construing an ambiguous contract, the conduct of the parties in relation to such contract is to be considered in determining the meaning of the contract. Where the Army contracts with appellant to provide natural gas to certain areas and the appellant constructs a pipeline pursuant to the contract, it is reasonable to interpret the contract as providing a revocable permit for a right-of-way for such pipeline.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not with some particularity show adequate reason for appeal and support the allegations with evidence showing error.

Valley Mobile Communications, Inc., 38 IBLA 359 (Dec. 29, 1978)

ACT OF JANUARY 21, 1895

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

A right-of-way issued pursuant to the Act of Jan. 21, 1895, gives the holder thereof an exclusive right of user.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 15, 1901

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

ACT OF MARCH 4, 1911

Where there are multiple users on the same communications site each user is individually responsible for the fair market rental value computed as of the time of the initiation of use, and such rental value determined for the site may not be prorated among different users.

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decision-maker, that the decision-maker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

APPLICATIONS

When considering an application for determination of right-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights between private parties which is a matter of State law. An application for a water pipeline right-of-way will not be approved where the applicant has no existing right to the water which he proposes to convey.

Executive Order No. 107 of Apr. 17, 1926, withdrew from appropriation all waterholes on public lands, and a purported right to appropriate water from the spring that postdates the withdrawal is without effect.

Pursuant to the Act of Feb. 15, 1901, repealed by sec. 706(a) of the Act of Oct. 21, 1976 (90 Stat. 2743, 2793), the Department had discretionary authority to permit the use of a right-of-way across public lands to supply water for domestic purposes; however, a right-of-way application for such use was properly rejected where approval of the grant would be contrary to the public interest.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977).

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

It is appropriate for the Bureau of Land Management to reject a right-of-way application for a pipeline to convey water from a spring on public lands to private lands where it has determined that the overall effect of granting similar applications in a given area would be adverse to the public interest and allowance of one application might establish a precedent contrary to the public interest.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as filed under the Federal Land Policy and Management Act of 1976.

Arnold E. Hedell, 37 IBLA 22 (Sept. 12, 1978)

Applications for rights-of-way for oil and gas pipelines, or amendments thereto which were pending at the time of the passage of the Trans-Alaska Pipeline Authorization Act of Nov. 16, 1973, 87 Stat. 579, amending sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), may only be granted pursuant to the provisions of that Act.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. An application for a right-of-way pursuant to 43 CFR 2802.1-1 which does not comply with the clear and unequivocal requirements of the regulation must be rejected.

Personnel of BLM are not required to alter, modify, or correct an application for a right-of-way in order to conform such application to the requirements of the regulation under which it was filed.

Beehive Telephone Co., Inc., 38 IBLA 80 (Nov. 9, 1978)

CANCELLATION

Although a right-of-way granted under the Act of Jan. 21, 1895, was previously subject to cancellation by the authorized officer for non-use pursuant to 43 CFR 2802.2-3, the Federal Land Policy and Management Act of 1976 provides that suspension or termination of a right-of-way requires an appropriate administrative proceeding pursuant to 5 U.S.C. § 554 (1970), except where the right-of-way provides by its terms that it will terminate in such event.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Sec. 503 of the Federal Land Policy and Management Act of 1976 gives the Secretary discretionary authority with respect to issuance of rights-of-way. It would not be in public interest to grant appellant right-of-way because of inadequate water flow in Shoshone River and because of potential interference with planning for a modification of Buffalo Bill Dam. A decision by BLM, made in exercise of its discretion, to reject a water pipeline right-of-way application will be affirmed when the record shows the decision to be a reasoned analysis of factors involved made in due regard for public interest, and no sufficient reason to disturb decision is shown.

Broken H Ranch Co., 34 IBLA 182 (Mar. 21, 1978)

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a domestic water pipeline right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Stanley S. Leach, Roxanna M. Leach, 35 IBLA 53 (May 9, 1978)

NATURE OF INTEREST GRANTED

A right-of-way issued pursuant to the Act of Jan. 21, 1895, gives the holder thereof an exclusive right of user.

Western Aggregates of Mineral & Rock, Inc., 34 IBLA 164 (Mar. 14, 1978)

RULES OF PRACTICE
(See also Appeals, Contests and Protests, Contracts, Federal Coal Mine Health and Safety Act of 1969, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)

GENERALLY

Where, in a quasi-judicial Departmental proceeding, an individual entered an appearance as attorney for a party to the action, and it was subsequently revealed that he was not qualified to practice before the Department under any of the provisions of 43 CFR 1.3, the presiding administrative law judge properly refused to continue to recognize his appearance or to permit him to continue to conduct the case in a representative capacity.

United States v. John Gayanich, 36 IBLA 111 (July 14, 1978)

RULES OF PRACTICE--Continued

GENERALLY--Continued

Service by registered or certified mail may be proved by a Post Office return receipt showing that the document was delivered to the person's record address. The receipt need not be signed necessarily by the person to whom the mail was addressed.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

The use of a post office box number as an address is not barred by the oil and gas leasing regulations governing applications or by the Rules of Practice of the Department.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

While an appeal of one decision of the BLM is pending before the Board, the BLM is without authority to exercise jurisdiction in the matter which is the subject of the appeal. Where the BLM exercises jurisdiction and the subsequent decision presents the same issue as the first, and the parties are given an adequate opportunity at the hearing and on appeal to present evidence and argue as to this issue, the Board will proceed to consider both decisions on their merits.

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

APPEALS

Generally

Under 43 CFR 4.401(a), a notice of appeal to the Board of Land Appeals may be considered even if not filed within the 30-day appeal period, where it is filed within 10 days of the deadline date and is transmitted within the appeal period.

United States v. James Becker, 33 IBLA 301 (Jan. 10, 1978)

The publication by the Director, Geological Survey, of a "Notice to Lessees" is not an action appealable to this Board under 30 CFR Part 290, where the "Notice" is a generalized instruction to subordinates of the Geological Survey, and the "Notice," itself, is not self-executing. Specific application of the "Notice" to a lessee is, however, a matter subject to appeal and review within the Board of Land Appeals.

Tenneco Oil Co., 36 IBLA 1 (June 27, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

appeal, which is subject to summary dismissal by the Board.

Donald W. Coyer (Appellant), Alfred L. Fasterday (Appellee), 36 IBLA 181 (July 31, 1978)

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

A request for an oral argument before the Board of Land Appeals may be denied when legal issues are well briefed and no useful purpose would be served.

Estate of Charles D. Ashley, 37 IBLA 367 (Nov. 2, 1978) 85 I.D. 403

An appeal from a decision denying a protest against the issuance of a patent must be dismissed if the patent has been issued, because the Department has no jurisdiction to act further in the matter.

Because issuance of a patent removes the land from Departmental jurisdiction, it is not proper to issue that patent simultaneously with dismissal of a protest

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

against the patent application because such action deprives the protester of his right to review and precludes compliance with 43 U.S.C.A. § 1701(a)(5) (West Supp. 1978) which mandates objective administrative review of initial decisions.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

Burden of Proof

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

Where, on appeal, a grantee of a right-of-way makes a substantial showing of error in the revision of the rental rate for use of the right-of-way, and where the State Office has not had an opportunity to consider the grantee's arguments, a decision dismissing a protest to the revised rental rate will be set aside and the case will be remanded in order to afford the State Office an opportunity to review its appraisal in light of the grantee's contentions.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

On appeal, an assessment of damages made by BLM for timber trespass will not be disturbed where neither appellant's contentions nor the record prove that BLM determination was in error.

David Robinson, 36 IBLA 386 (Sept. 5, 1978)

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

Where arguably conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM resolving the conflict unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the intended purpose, or that there is sufficient reason to change the result.

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

On appeal from a determination of United States Geological Survey under 30 U.S.C. §§ 1002-03 (1976), rejecting offeror's competitive geothermal lease bid as too low, offeror has the burden of showing that the rejection is arbitrary and capricious and that Survey has no rational basis for rejection of the bid.

Union Oil Co., 38 IBLA 373 (Dec. 29, 1978)

Discovery

The Federal Rules of Civil Procedure are not binding on administrative agencies.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Dismissal

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 34 IBLA 283 (Apr. 17, 1978)

United States v. David F. Mangum and Donald D. DeGuerre, 35 IBLA 131 (May 22, 1978)

The publication by the Director, Geological Survey, of a "Notice to Lessees" is not an action appealable to this Board under 30 CFR Part 290, where the "Notice" is a generalized instruction to subordinates of the Geological Survey, and the "Notice," itself, is not self-executing. Specific application of the "Notice" to a lessee is, however, a matter subject to appeal and review within the Board of Land Appeals.

Tenneco Oil Co., 36 IBLA 1 (June 27, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

Donald W. Coyer (Appellant), Alfred L. Fasterday (Appellee), 36 IBLA 181 (July 31, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

Peabody Coal Co., 36 IBLA 242 (Aug. 14, 1978)

When appellant has failed to serve a copy of the notice of appeal and statement of reasons on the adverse party named in the decision appealed from, in the manner prescribed in 43 CFR 4.401(c), and the adverse party moves for summary dismissal under 43 CFR 4.413(b), the appeal is properly dismissed where appellant has not responded to the motion for dismissal or acknowledged the procedural deficiency.

Dawley Creek Ranch and L. Franklin Mader, 37 IBLA 30 (Sept. 18, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer may properly be rejected for the reason that title to the lands involved was uncertain, and a new lease offer for the same lands is again rejected for the same reason, the matter is res judicata, and the subsequent appeal is properly dismissed.

N. L. Industries, Inc., 37 IBLA 335 (Oct. 26, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error and the allegations in his statement of reasons are vague and unsupported.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

Effect of

A timely appeal from rejection of an oil and gas lease offer because of a determination of known geologic structure suspends the rejection pending decision by this Board, and where the Geological Survey rescinds the KGS determination as having been erroneously made during the pendency of the appeal, the status quo ante of land involved is restored.

Where land was omitted from an oil and gas lease only because of an erroneous KGS determination, and the applicant has preserved his priority by timely appealing the rejection, it is proper to amend such lease to include such omitted land when the Geological Survey rescinds its erroneous KGS determination.

David A. Provinse, 33 IBLA 312 (Jan. 13, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

Where BLM issues a decision requiring that an oil and gas offeror submit additional advance rental within 30 days, and the offeror files a timely appeal to this Board, the running of the 30 days is suspended. Following affirmation by this Board of BLM's decision, the offeror is properly given the entire 30 days within which to submit the additional rental.

Mobil Oil Corp., 35 IBLA 375 (June 23, 1978)
85 I.D. 225

When an appeal is filed with the Board of Surface Mining and Reclamation Appeals from a decision made by the Office of Surface Mining Reclamation and Enforcement, that office loses jurisdiction and has no authority to take any action concerning it until that jurisdiction is restored by action of the Board that is dispositive of the appeal.

Apache Mining Co., 1 IBSMA 14 (July 13, 1978)
85 I.D. 395

When an appeal is filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction of the case and has no further authority to take any action concerning it until his jurisdiction over the matter is restored by action dispositive of the appeal.

Duncan Miller, 38 IBLA 154 (Dec. 5, 1978)

While an appeal of one decision of the BLM is pending before the Board, the BLM is without authority to exercise jurisdiction in the matter which is the subject of the appeal. Where the BLM exercises jurisdiction and the subsequent decision presents the same issue as the first, and the parties are given an adequate opportunity at the hearing and on appeal to present evidence and argue as to this issue, the Board will proceed to consider both decisions on their merits.

California Association of Four-Wheel Drive Clubs, et al., 38 IBLA 361 (Dec. 29, 1978)

Failure to Appeal

When BLM adjudicates issue and offeror does not appeal, doctrine of administrative finality, which is administrative counterpart of res judicata, generally bars consideration of new appeal arising from later proceeding involving same lease and same issue. Accordingly, BLM acted properly in dismissing appellant's protest, filed Nov. 18, 1977, against oil and gas lease annual rental adjudicated on July 27, 1977.

Wilfred Plomis, 35 IBLA 1 (May 3, 1978)

Hearings

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

Motions

The Government's opposition to appellant's request for a hearing and its motion for partial summary judgment in a default termination case are both denied where the contractor contends and the Government denies that the delays experienced by the contractor in attempting to perform the contract were excusable and the Board finds that determining whether delays are excusable in such circumstances involves resolving a fact question which should only be done after the parties have had an opportunity to present their evidence at a hearing where one has been requested.

Appeal of Briles Wing & Helicopter, Inc., IBCA-1158-7-77 (Apr. 14, 1978) 85 I.D. 77

Reconsideration

A request for allowance of attorney fees is denied on a motion for reconsideration where the prior decision specifically considered and disallowed these costs in accordance with prevailing law.

A motion for reconsideration is denied where based on the same arguments made and fully considered in the principal decision.

Appeals of JB&C Co., IBCA-1020-2-74 and IBCA-1033-4-74 (Feb. 22, 1978) 85 I.D. 67

A Government motion for reconsideration is denied where the Board finds that a cost estimate (cost and pricing data) was not a firm offer to perform the work within the hours and at the prices or rates specified, but was rather simply the initial basis for negotiating a cost-plus-fixed-fee contract.

Appeal of W. F. Sigler & Associates, IBCA-1159-7-77 (Apr. 14, 1978) 85 I.D. 167

A request to reconsider a final decision of the Department rejecting applications for homestead entry is properly rejected in the absence of a showing of extraordinary circumstances. Except where compelling legal and equitable reasons for reconsideration are shown, the principle of res judicata and its counterpart, finality of administrative action, will bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

Service on Adverse Party

When appellant has failed to serve a copy of the notice of appeal and statement of reasons on the adverse party named in the decision appealed from, in the manner prescribed in 43 CFR 4.401(c), and the adverse party moves for summary dismissal under 43 CFR 4.413(b), the appeal is properly dismissed where appellant has not responded

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

to the motion for dismissal or acknowledged the procedural deficiency.

Dawley Creek Ranch and L. Franklin Mader, 37 IBLA 30 (Sept. 18, 1978)

Standing to Appeal

Under 43 CFR 4.410, any party to a case who is adversely affected by a decision of the Bureau of Land Management has a right of appeal to the Board of Land Appeals, even where the decision concerns legislation which has been repealed.

Pancher Bros., 33 IBLA 262 (Jan. 5, 1978)

Suzanne A. Halliday, 34 IBLA 219 (Mar. 27, 1978)

A decision to return an application for a public sale constitutes an action adverse to the applicant by an officer of the Bureau of Land Management and is thus appealable to the Board of Land Appeals under 43 CFR 4.410.

United Park City Mines Co., 33 IBLA 358 (Jan. 18, 1978)

An insurance company is refused permission to participate directly in prosecution of an appeal proceeding with a view to recovering the amount paid to the contractor under a builder's risk insurance policy as part of the contractor's differing site conditions claim, where the grounds assigned for the participation are that the interests of the contractor and the insurance company may well prove to be adverse and that the insurance company has the right to participate directly by reason of its status as a partial subrogee, the Board finding (i) that the privity of contract rule rather than the real party in interest rule is controlling in appeal proceedings and (ii) that it has no authority under the Disputes clause to adjudicate the rights of the contractor and the insurance company should they prove to be adverse, irrespective of whether such rights are asserted by the insurance company under a release and assignment of interest executed by the contractor or as a partial subrogee and without regard to the fact that the appellant had authorized the insurance company to file a separate complaint and to prosecute its claim through its own attorneys in the appellant's name.

Appeal of Zurn Engineers, IBCA-1176-12-77 (July 20, 1978) 85 I.D. 279

Statement of Reasons

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 34 IBLA 283 (Apr. 17, 1978)

United States v. David F. Mangum and Donald D. DeGuerre, 35 IBLA 131 (May 22, 1978)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Duncan Miller, 37 IBLA 129 (Oct. 4, 1978)

An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error and the allegations in his statement of reasons are vague and unsupported.

Duncan Miller, 38 IBLA 259 (Dec. 8, 1978)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not with some particularity show adequate reason for appeal and support the allegations with evidence showing error.

Valley Mobile Communications, Inc., 38 IBLA 359 (Dec. 29, 1978)

EVIDENCE

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

Ray L. Virgin, 33 IBLA 354 (Jan. 18, 1978)

What men have or have not done over a period of years is proper evidence as to the conduct of a prudent man in the same or very nearly the same circumstances. Where mining claims had been held for many years and little or no commercial production was achieved on such claims, it may be concluded that no prudent man would have been justified in the belief that the mineral deposit could be developed, extracted, and marketed at a reasonable profit.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Evidentiary submissions on appeal can be considered only for the limited purpose of determining whether a further hearing should be granted. The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

There is not a sufficient equitable basis for reopening a hearing in a mining contest because of an alleged fire to the contestee's home 3 days before the scheduled hearing where neither she nor her attorney who had entered an appearance in the case requested a postponement of the hearing or a continuation of the hearing after it had been held. Also, a further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery of a valuable mineral deposit.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

In mining claim contest, Government must only go forward with evidence to establish prima facie case of no discovery of valuable mineral deposits, and burden then shifts to mining claimant to prove by preponderance of evidence that his claim is valid.

Government has established prima facie case when its mineral examiner testifies that he has examined mining claims in issue and found mineral values insufficient to support finding of discovery of valuable deposits.

United States v. Michael B. Marion, 37 IBLA 68 (Sept. 18, 1978)

Assay reports have limited probative value as to the existence of a valuable mineral deposit on a mining claim when they are not supported by evidence as to how and where the samples were taken.

United States v. John S. Porter, 37 IBLA 313 (Oct. 25, 1978)

GOVERNMENT CONTESTS

In a Government contest, regular service of the complaint must be presumed, where no question is raised as to the validity of certified mail return receipts included in the record, regular on their face and indicating proper service.

United States v. Bonda Niece and Leslie Niece, 33 IBLA 290 (Jan. 10, 1978)

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

United States v. John R. Parsons, 33 IBLA 326 (Jan. 16, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

United States of America v. David L. King, et al., 34 IBLA 15 (Feb. 10, 1978)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

In a mining contest a contestee may rest at the close of the Government's case and move for a dismissal based on the Government's failure to make out a prima facie case of a claim's invalidity. If, however, the contestee goes forward and presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Michael Slater, 34 IBLA 31 (Feb. 14, 1978)

Where the Bureau of Land Management brings a contest complaint against unpatented mining claims, naming as contestee only the estate of the deceased claimant, proper service of process upon the court appointed administrator, executor, or personal representative of the deceased claimant is necessary in order to affect the interests of all the heirs of the deceased.

Heirs of a deceased mining claimant who personally respond without protest or objection to a Government contest complaint which names as contestee only the estate of their intestate decedent will be bound by the result of such contest insofar as it purports to affect their interest in that estate, even though service on the estate itself was faulty.

United States v. Estate of W. R. Wood, 34 IBLA 44 (Feb. 16, 1978)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing. Unsubstantiated allegations of temporary incapacity due to a nervous breakdown cannot serve as a basis for waiving this mandatory requirement.

United States v. Brent J. Brunker, 36 IBLA 36 (June 27, 1978)

Where the Government contests a mining claim for lack of discovery, it assumes only the burden of making a prima facie showing that discovery is lacking, and the burden of showing a valuable discovery by a preponderance of the evidence then falls upon the claimants.

Where, in a mining contest, a contestee presents his own evidence, that evidence may be weighed against him notwithstanding any defects in the Government's case.

United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (July 25, 1978)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

United States v. Clayton A. Dillman and Jean P. Dillman, 36 IBLA 358 (Aug. 31, 1978)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

HEARINGS

A request for a hearing will be denied in the absence of an assertion of fact which, if proved true, would entitle appellant to the relief sought.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978) 85 I.D. 171

In some cases due process requires not that a person have notice and a prior hearing before a deprivation of property, but that an individual be given notice and an opportunity for a hearing before the deprivation of property becomes final.

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

The Federal Rules of Civil Procedure are not binding on administrative agencies.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970) and 43 U.S.C. § 898 (1970), in which case a hearing need not be ordered to determine whether a railroad's purchaser was an innocent purchaser for value.

Southern Pacific Transportation Co., Donald K. Lee, Charles Siller v. United States Forest Service, 35 IBLA 270 (June 2, 1978)

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio--without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the

RULES OF PRACTICE--Continued

HEARINGS--Continued

Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

James Messano, 35 IBLA 383 (June 23, 1978)

It requires a substantial showing of bias to disqualify a hearing officer in administrative proceedings or to justify a charge that the hearing was unfair.

United States v. Richard H. Kingdon and Edith F. Kingdon, 36 IBLA 11 (June 27, 1978)

Evidentiary submissions on appeal can be considered only for the limited purpose of determining whether a further hearing should be granted. The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

There is not a sufficient equitable basis for reopening a hearing in a mining contest because of an alleged fire to the contestee's home 3 days before the scheduled hearing where neither she nor her attorney who had entered an appearance in the case requested a postponement of the hearing or a continuation of the hearing after it had been held. Also, a further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery of a valuable mineral deposit.

United States v. Florence J. Mattox, 36 IBLA 171 (July 31, 1978)

The notice and opportunity for hearing envisaged by 43 CFR 2802.1-7(e) requires at a minimum that the lessee be provided with a copy of the appraisal report, that he be permitted to appear before the decision-maker, that the decision-maker not be the person who made or approved the appraisal, and that adequate records of the hearing conducted pursuant to the regulations be maintained.

Circle L, Inc., 36 IBLA 260 (Aug. 15, 1978)

A second hearing will not be afforded generally where a claimant was given notice and an opportunity to appear at a hearing, where he did appear and was represented at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

A second hearing will not be afforded where a mining claimant has submitted nothing which suggests that another hearing would produce a different result, i.e., a finding that a valuable mineral deposit has been discovered on a mining claim. Assertions that further mineral examination would prove the existence of such a deposit and that such a deposit exists on adjacent

HEARINGS--Continued

land, without more, do not entitle the claimant to another hearing.

United States v. Lost Polack Mining Assoc., 38 IBLA 101 (Nov. 20, 1978)

PRIVATE CONTESTS

A private contest complaint which does not set out in clear and concise language a statement of the facts constituting the grounds of contest is properly dismissed.

Eugene A. Whitmill, 34 IBLA 123 (Mar. 2, 1978)

Where the only properly corroborated fact alleged by private contestant related to situs of contestee's residence in 1975 and thereafter, but precomplaint record included assertion by contestee that he lived on homestead in 1972, 1973, and 1974, the contestant has not thereby alleged facts which, if proved, would require cancellation of entry, and contest must be dismissed under 43 CFR 4.450-5(a).

Although in his summary dismissal of private contest against homestead entry administrative law judge discussed issues upon which contestant had failed to submit corroborated allegations of fact along with his complaint, such action by judge did not relieve contestant of his burden of filing corroboration, despite provisions of 43 CFR 4.450-4(b) allowing judge to "raise issues in connection with deciding a contest."

Administrative law judge properly dismissed without a hearing a private homestead entry contest in which complaint failed to allege corroborated facts which, if proved, would provide sufficient basis for cancellation of entry.

Where contestant in private homestead entry contest appeals to Board of Land Appeals and makes certain assignments of error by administrative law judge, but allegations of fact upon which those assignments are based were not corroborated at filing of contest complaint, and issues raised by those assignments were not raised in complaint, such assignments are not material for purposes of appeal to the Board.

Ernest C. Lamb v. Richard R. Stoffel, 36 IBLA 201 (Aug. 3, 1978)

Intervention, by right, as a full party in a contest proceeding is only recognized where the individual seeking intervention has the necessary interest to maintain a private contest independently under 43 CFR 4.450-1.

The extent of the participation in a contest hearing to be afforded "interested individuals" who do not have a sufficient interest to maintain a private contest is committed to the sound discretion of the administrative law judge. Among the factors which are properly considered are: the desires of the original parties; the likelihood that the party seeking intervention will provide information which would not be forthcoming without its participation; and the cost which must be borne by both the contestant and the contestee by the nature and scope of the intervention granted.

United States v. United States Pumice Co., 37 IBLA 153 (Oct. 5, 1978)

PROTESTS

Service by registered or certified mail may be proved by a Post Office return receipt showing that the document was delivered to the person's record address. The receipt need not be signed necessarily by the person to whom the mail was addressed.

The burden is on a protestant to show, as justification for the disqualification of the successful drawee in a simultaneous filing drawing procedure, that the offer is in fact defective. A suggestion of the possibility of violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing of disqualification, a protest alleging disqualification is properly rejected.

Lillian Sweet, 37 IBLA 25 (Sept. 14, 1978)

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

WITNESSES

The Government, after waiver of the original delivery schedule, has the burden of proof that the unilaterally established new schedule is reasonable under all the circumstances existing at the time of the reestablishment, which, however, it failed to show.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Jan. 19, 1978) 85 I.D. 12

SCRIP

(See also Soldiers' Additional Homesteads--if included in this Index.)

VALIDITY

An application by a remote assignee to exercise soldiers' additional homestead rights is properly rejected when the validity of the right on which the assignment is based has not been established.

George Rodda, Jr., 37 IBLA 189 (Oct. 11, 1978)

SECRETARY OF THE INTERIOR

Pursuant to the Act of Feb. 15, 1901, repealed by sec. 706(a) of the Act of Oct. 21, 1976 (90 Stat. 2743, 2793), the Department had discretionary authority to permit the use of a right-of-way across public lands to supply water for domestic purposes; however, a right-of-way application for such use was properly rejected where approval of the grant would be contrary to the public interest.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

SECRETARY OF THE INTERIOR--Continued

The promulgation or revocation of a regulation is within the special authority of the Secretary of the Interior and a limited number of delegates. A regulation, when promulgated, is binding upon all Departmental officials.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

Island Creek Coal Co., 35 IBLA 247 (May 30, 1978)
85 I.D. 161

Thomas C. Woodward, 35 IBLA 262 (May 31, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

The Secretary of the Interior has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. Andrew L. Freese II, 37 IBLA 7 (Sept. 6, 1978)

The Secretary of the Interior has plenary authority over the public lands, including mineral lands, and has been entrusted with the function of making the initial determination of the validity of claims against such lands.

United States v. Paul P. Fisher and Buel B. Fisher, 37 IBLA 80 (Sept. 22, 1978)

SECRETARY OF THE INTERIOR--Continued

Under 43 CFR 4.1 the existence of a Secretarial policy limits review by the Board of Land Appeals to the question of whether the action under review is consistent with that policy.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. Oil and gas lease offers within area proposed for inclusion in the wild and scenic river system may be rejected to protect such areas.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

SEGREGATION

GENERALLY

A classification of the lands under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970), as amended, segregates the land from all other forms of appropriation under the public land laws including the mining laws when the classification is noted on the Bureau of Land Management State Office records.

H. B. Webb, 34 IBLA 362 (May 1, 1978)

There is a legal distinction between the administrative segregation of land under application for withdrawal, pending action on the application, and the completed withdrawal itself.

"Segregation" is an administrative procedure preliminary to favorable or unfavorable action on a withdrawal application by the Secretary of the Interior in the exercise of his delegated authority under the Pickett Act, 43 U.S.C. § 141 et seq. (1970), and is not legally equivalent, in its effect on the status of the land, to a completed withdrawal or reservation.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

FILING OF APPLICATION

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

Janelle R. Deeter, Gary B. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

The filing of an application for withdrawal of public lands by a Federal agency segregates the land from location, sale, selection, entry, lease, or other forms of disposal under the Public Land Laws to the extent that such withdrawal, if effected, would prevent such forms of disposal.

Segregation of lands covered by a withdrawal application filed by a military agency, accomplished by a notation of the land records, does not prevent statutory withdrawal of such lands for selection by a Native Corporation pursuant to sec. 11 of ANCSA.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

SMALL TRACT ACT

GENERALLY

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1970).

Richard O. Dale, et al., 38 IBLA 175 (Dec. 6, 1978)

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

CLASSIFICATION

The Small Tract Act, 43 U.S.C. § 682a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Arthur G. Lane, Jr., 38 IBLA 297 (Dec. 14, 1978)

SODIUM LEASES AND PERMITS

GENERALLY

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products" along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

SODIUM LEASES AND PERMITS--Continued

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

An application by a remote assignee to exercise soldiers' additional homestead rights is properly rejected when the validity of the right on which the assignment is based has not been established.

George Rodda, Jr., 37 IBLA 189 (Oct. 11, 1978)

SPECIAL USE PERMITS

The issuance of a use permit is discretionary, and BLM may reject an application for such a permit where Bureau studies indicate that the uses proposed are inconsistent with the agency's objectives for the lands involved.

Arnold E. Hedell, 37 IBLA 22 (Sept. 12, 1978)

STATE GRANTS

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

STATE SELECTIONS
(See also School Lands, Swamplands--if included in this Index.)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

Janelle R. Deeter, Gary B. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

STATE SELECTIONS--Continued

A Bureau of Land Management decision rejecting a selection application by the State of Utah under its Miner's Hospital Grant because the land is deemed mineral in character due to a classification as valuable for oil, gas, and coal will be set aside because it failed to consider relevant statutes and regulations permitting selections of land valuable for minerals leasable under the Mineral Leasing Acts with a reservation of the minerals to the United States.

A State selection application for lands valuable for leasable minerals may be rejected where it is determined that the disposal of the surface rights will unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts and there is a proper basis in the record for such a determination which is unrefuted by the applicant. However, if there is no substantiation in the record for the determination and a State asserts error, the case will be remanded to the Bureau of Land Management to reconsider the determination, with the Geological Survey, and substantiate the basis of any future determination.

State of Utah, Department of Natural Resources, 38 IBLA 85 (Nov. 15, 1978)

STATUTORY CONSTRUCTION

GENERALLY

Sec. 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1970), providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j) (1970), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

Jack L. McClellan, Marton Majoros, 34 IBLA 53 (Feb. 16, 1978)

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

"Ejusdem generis." The ejusdem generis rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978) 85 I.D. 129

STATUTORY CONSTRUCTION--Continued

GENERALLY--Continued

When those provisions of reclamation law which are specifically incorporated by SRPA are added to the provisions of SRPA itself, they form a complete scheme which is capable of standing by itself without need to incorporate the general body of reclamation law.

When a statute is enacted as being "supplemental" to a general law, it will incorporate the provisions of that other law to the extent the provisions of the general law are not inconsistent with the supplemental statute, unless the intent is otherwise clear that Congress did not intend incorporation.

Application of the Acreage Limitation and Residency Requirements to Small Reclamation Projects Act Projects, M-36904 (July 17, 1978) 85 I.D. 254

STOCK-RAISING HOMESTEADS

As to gravel, interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether gravel is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 et seq. (1970), was not generally intended to give the grantee the right to use the land for mineral development and mineral development was to proceed only under the mineral laws.

"Ejusdem generis." The ejusdem generis rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Gravel in a valuable deposit is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978) 85 I.D. 129

SURFACE RESOURCES ACT

GENERALLY

The declaration in the Surface Resources Act, 30 U.S.C. § 611 (1970), that no deposit of common varieties of gravel shall be deemed a valuable mineral deposit within the meaning of the mining laws, was not intended to operate as a conveyance, to holders of patents, of any minerals reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

Roy Blake, 38 IBLA 151 (Dec. 5, 1978)

APPLICABILITY

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

HEARINGS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

SURPLUS PROPERTY
(See also Federal Property and Administrative Services Act--if included in this Index.)

Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

Capitol Oil Corp., 33 IBLA 392 (Jan. 26, 1978)

SURVEYS OF PUBLIC LANDS

GENERALLY

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

second survey affect property rights acquired under an official survey.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

A dependent resurvey by BLM which does not follow the Manual of Surveying Instructions (1973) constitutes gross error and must be canceled. Such gross error includes conducting a dependent resurvey in which data in the official plat of survey of the township and its field notes are ignored and changing corners established by the original survey to the prejudice of bona fide property rights acquired in good faith in reliance on the integrity of the original survey.

Domenico A. Tussio, et al., 37 IBLA 132 (Oct. 4, 1978)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

DEPENDENT RESURVEYS

A dependent resurvey by BLM which does not follow the Manual of Surveying Instructions (1973) constitutes gross error and must be canceled. Such gross error includes conducting a dependent resurvey in which data in the official plat of survey of the township and its field notes are ignored and changing corners established by the original survey to the prejudice of bona fide property rights acquired in good faith in reliance on the integrity of the original survey.

Domenico A. Tussio, et al., 37 IBLA 132 (Oct. 4, 1978)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors.

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

In challenging the Government resurvey, appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Bethel C. Vernon, 37 IBLA 226 (Oct. 16, 1978)

TOWNSITES

Authority to dispose of land within Alaska railroad townsites under 43 U.S.C. § 975b (1970) was repealed by sec. 704(a) of the Federal Land Policy and Management Act of 1976.

Matanuska-Susitna Borough, Inc., 38 IBLA 382 (Dec. 29, 1978)

TRESPASS

GENERALLY

A person intending to occupy land has a duty to ascertain its owner and to gain his consent to utilization prior to such occupancy. A person cited for a previous similar trespass for which he paid damages may properly be deemed to be a willful trespasser. Under Arizona law, punitive damages for willful trespass are permissible, and the imposition of triple damages for a willful trespass is not inappropriate.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Where there has been an unauthorized use of the public lands, BLM may assess damages against the trespasser and serve him with a demand for payment thereof, prior to turning the matter over to the Department of Justice for initiation of judicial proceedings.

Gold Mountain Logging Co., 34 IBLA 326 (Apr. 25, 1978)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates the Department of the Interior retaining continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Under 43 CFR 9239.3-2(e), the repetitive nature of grazing trespasses coupled with a negligent failure of licensee to take corrective action supports a finding of willful trespass.

On appeal from a show cause proceeding under 43 CFR 9239.3-2(e), a requirement for ear-tagging of cattle recommended by a district manager and imposed by an administrative law judge will be set aside where the grazer objected thereto and was not accorded proper opportunity to offer evidence thereon. 43 CFR 4112.3-2(a)(4).

Calvin C. Johnson, 35 IBLA 306 (June 2, 1978)

On appeal, an assessment of damages made by BLM for timber trespass will not be disturbed where neither appellant's contentions nor the record prove that BLM determination was in error.

David Robinson, 36 IBLA 386 (Sept. 5, 1978)

TRESPASS--Continued

GENERALLY--Continued

The Board of Land Appeals will not exercise its de novo review authority to deny applications for Alaska grazing leases on the basis of trespass where (1) trespass was not cited as a reason for denial of the applications in the decision under appeal, (2) the record does not provide a clear basis for determining the applicant's responsibility for the trespass, and (3) there is no record of compliance with the procedures specified in 43 CFR 9239.0-9(b).

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

Where the alleged trespasser makes no allegations of a specific and substantial nature regarding whether or not a trespass has in fact occurred, the procedure authorized by 43 CFR 9239.3-2(c)(4) limiting a hearing "to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass" does not result in a denial of due process.

A hearing on the issue of whether or not a trespass was willful or not clearly willful is authorized by 43 CFR 9239.3-2(c)(4) because a finding on this issue affects the rate at which the value of the forage consumed shall be computed pursuant to 43 CFR 9239.3-2(c)(2).

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Since a grazing trespass is not a criminal proceeding, it need not be proved beyond a reasonable doubt that a particular individual committed the trespass.

Evidence is insufficient to support a finding of a willful trespass where it fails to show that the alleged trespasser intended to disregard the regulation prohibiting trespass or that he was plainly indifferent to its requirements or that he acted with gross neglect of a known duty.

Where the administrative law judge does not make a finding as to whether a trespass was willful or not clearly willful, the Board of Land Appeals may make this finding based upon the record as if it were sitting as trier of fact.

Where BLM has impounded five horses found to be trespassing on public lands closed to grazing and no notice and hearing are afforded to the owner of said animals prior to impoundment because the owner is unknown to BLM, the due process rights of said owner are not violated. The procedures authorized by 43 CFR 9239.3-2(c)(3) do not violate due process.

The Property Clause of the United States Constitution art. IV, § 3, cl. 2, gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them." When Congress so acts, the Federal legislation necessarily overrides conflicting State laws under the Supremacy Clause. U.S. Constitution art. IV, cl. 2.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

TRESPASS--Continued

GENERALLY--Continued

A notice to cease trespass and an order to remove improvements from the public lands are proper where appellant has been occupying public lands while operating a well service for 7-8 years without proper authorization.

James E. Billings, 38 IBLA 353 (Dec. 22, 1978)

MEASURE OF DAMAGES

Arizona Revised Statutes § 37-502, which provides for damages in civil actions for trespass on State lands, does not apply to cases involving right-of-way trespass on Federal lands located in Arizona.

A person intending to occupy land has a duty to ascertain its owner and to gain his consent to utilization prior to such occupancy. A person cited for a previous similar trespass for which he paid damages may properly be deemed to be a willful trespasser. Under Arizona law, punitive damages for willful trespass are permissible, and the imposition of triple damages for a willful trespass is not inappropriate.

Mountain States Telephone & Telegraph Co., 34 IBLA 154 (Mar. 10, 1978)

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Gold Mountain Logging Co., 34 IBLA 326 (Apr. 25, 1978)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, a hearing will not be ordered and an appraisal will not be disturbed in the absence of an offer of specific substantial evidence that the determination is incorrect.

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

Where record shows willful trespass on Federal lands located in Oregon, applicable law, as mandated under 43 CFR 9239.0-8, for measure of damages is found in Oregon Revised Statutes 105.810, which prescribes treble damages.

Proper computation under Oregon Revised Statutes 105.810 of damages for willful timber trespass begins with assessment of actual damages, which are measured by difference between market values of pertinent land before and after severance of trees. Ordinarily, the market value of the trespass timber will reflect the value of the actual damage to the public land. Actual damages are then trebled, and from this amount is subtracted an allowance for such salvage as BLM by its own diligence realized or should have realized. The sum allowed in mitigation of damages is that which may be appropriate in a given case.

David Robinson, 36 IBLA 386 (Sept. 5, 1978)

TRESPASS--Continued

MEASURE OF DAMAGES--Continued

In determining whether grazing trespasses are willful, intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Fernando Herrera v. Bureau of Land Management, 38 IBLA 262 (Dec. 8, 1978)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

GENERALLY

Payments and benefits provided by Title II of the Act are made administratively in accordance with regulations and procedures established under provisions of the Act and are transactions separate and apart from land purchase contracts involving negotiations and agreement between the parties; accordingly, the amounts payable for relocation assistance benefits and for property acquisitions are not affected one by the other.

Uniform Relocation Assistance Appeal of Mr. Barry Wayne Martin, 2 OHA 169 (Mar. 30, 1978)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Robert L. Burnett, Jr., 3 OHA 1 (Nov. 6, 1978)

Payments and benefits provided by Title II of the Act are made administratively by the acquiring agencies in accordance with administrative regulations and procedures established under provisions of the Act and are transactions separate and apart from land purchase contracts involving negotiations and agreement between the parties; accordingly, the amounts payable for relocation assistance benefits and for property acquisitions are not affected one by the other.

Uniform Relocation Assistance Appeal of Iolyn J. and Ruth J. Hinkle, 2 OHA 206 (Sept. 6, 1978)

UNIFORM RELOCATION ASSISTANCE

Generally

A person who had moved from her dwelling on real property acquired by the United States and was residing elsewhere at the time negotiations were initiated for the purchase of the lands is not a person who moved from the acquired property as a result of its acquisition by the United States; and, therefore, that person is not a displaced person entitled to relocation assistance benefits within the meaning of the law and the implementing regulations.

Uniform Relocation Assistance Appeal of Elizabeth B. White, M.D., 2 OHA 203 (Aug. 30, 1978)

Moving and Related Expenses

Generally

A person who entered into rental occupancy of a dwelling after its ownership had passed to the United States is properly held to be ineligible for reimbursement of moving expenses under sec. 202 of the Act.

Uniform Relocation Assistance Appeal of Mr. James Dearing, 2 OHA 181 (June 21, 1978)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Where the record shows the claimant's move from a rented apartment dwelling on property acquired by the United States occurred prior to the date when negotiations were initiated by the United States with the owners of the property for its acquisition, the claimant is properly held to be ineligible for reimbursement of moving expenses under sec. 202 of the Act.

Uniform Relocation Assistance Appeal of Mr. Dennis F. Neuschwanger, 2 OHA 183 (June 22, 1978)

Payments in Lieu of Moving and Related Expenses

Fixed Payment(s)

Taking of Business Operation

A fixed payment in lieu of actual reasonable moving and related expenses is properly allowed for the minimum sum of $2,500, specified in the Act, where the record shows the business was operated at a loss for the 2 taxable years immediately preceding the year in which the Government acquired the property, all else being regular.

Uniform Relocation Assistance Appeal of Iolyn J. and Ruth J. Hinkle, 2 OHA 206 (Sept. 6, 1978)

Replacement Housing Payment for Homeowners

Generally

Replacement housing benefits under sec. 203 of the Act are properly denied where the owner occupancy of the dwelling on the acquired property was for less than the minimum period of 180 days immediately prior to the initiation of negotiations for acquisition of the property.

Uniform Relocation Assistance Appeal of Mr. Barry Wayne Martin, 2 OHA 169 (Mar. 30, 1978)

In determining the total acquisition cost of an apartment dwelling connected to a restaurant and lounge on acquired property, it is proper to add to the appraisal of the acquired dwelling the proportionate costs for the land on which the dwelling is situated and for the water and sewer system for the unit, as well as the proportionate amount of the total acquisition costs for the entire property in excess of appraised valuation which is allocable to the acquisition cost of the acquired dwelling.

Additional replacement housing supplement benefits will be allowed, within the statutory limitation, where the evidence of record establishes the additional cost of purchasing a comparable replacement dwelling in excess of the cost estimated by the Government.

Replacement housing supplement benefits will be increased, within the statutory limitation, to include reimbursement of reasonable expenses incurred by the displaced person for title insurance incident to the purchase of the replacement dwelling.

Uniform Relocation Assistance Appeal of Mr. Donald E. Stephens, 2 OHA 186 (Aug. 24, 1978)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Where the record evidence shows that the mobile home on the acquired lands was a seasonal or part-time residence and not the permanent or customary and usual abode of the claimants, the claimants are ineligible to receive replacement housing payment benefits under sec. 203 of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Robert L. Burnett, Jr., 3 OHA 1 (Nov. 6, 1978)

Replacement housing supplement benefits will be increased on appeal, within the statutory limitation, to include reasonable costs claimed for keys and lock repair, and reasonable estimated costs for repair of a kitchen range, where such costs are indicated as necessary to make the replacement dwelling decent, safe and sanitary, as provided in sec. 203 of the Act and the Department's implementing regulations. Reimbursement for other items claimed but not indicated by the record evidence as necessary to make the replacement dwelling decent, safe and sanitary, as provided in sec. 203 of the Act and the Department's implementing regulations, is properly denied.

Uniform Relocation Assistance Appeal of Adam M. Strycharz, Anna M. Strycharz, Claire Strycharz and Marie Strycharz, 3 OHA 14 (Nov. 14, 1978)

Additional replacement housing cost differential benefits will be allowed, within the statutory limitation, where the record on appeal shows such additional costs as reasonably necessary for purchase of a comparable replacement dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Edward W. Kurowski, 3 OHA 19 (Dec. 12, 1978)

Replacement Housing Payment for Tenants and Certain Others

A displaced homeowner purchases a replacement dwelling within the intent of sec. 204(2) of the Act when he salvages the dwelling formerly occupied by him on the acquired property, relocates and refurbishes it as a decent, safe, and sanitary dwelling on a replacement site acquired for the purpose, and continues to reside therein to the exclusion of a residence elsewhere.

The allowable replacement housing payment under sec. 204(2) of the Act, to a displaced homeowner who occupied the dwelling on the acquired property as owner for not less than 90 days immediately prior to the initiation of negotiations for acquisition of the property, is that amount which is necessary to enable him to make a downpayment including allowable incidental expenses described in sec. 203(a)(1)(C) of the Act, on the purchase of a decent, safe, and sanitary replacement dwelling, but not in excess of $4,000, provided, if such downpayment amount exceeds $2,000, the displaced person must match any amount in excess of $2,000 by an equal amount of his own funds.

Uniform Relocation Assistance Appeal of Mr. Barry Wayne Martin, 2 OHA 169 (Mar. 30, 1978)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Tenants and Certain Others--Continued

Where the record shows the monthly rent for the most comparable rental replacement housing is $40 more than the reasonable, or economic, rent of the residential unit from which the claimants were displaced, a rental replacement housing differential payment of $1,920, representing the additional rental costs for a period of 4 years, is proper under sec. 204(1) of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Richard Grudosky, 2 OHA 210 (Sept. 18, 1978)

UNITED STATES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

United States v. Maurice L. Wilson, 38 IBLA 305 (Dec. 14, 1978)

United States is not subject to a defense of laches in an action to enforce a public right. Thus, where BLM took approximately 2 years to declare reversion to United States of title to land patented with reversionary clause under Recreation and Public Purposes Act, appellants may find no relief in equitable doctrine of laches.

Roberta Thompson and Richard Lee Burnham, 38 IBLA 333 (Dec. 20, 1978)

WATER AND WATER RIGHTS

STATE LAWS

When considering an application for determination of right-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights between private parties which is a matter of State law. An application for a water pipeline right-of-way will not be approved where the applicant has no existing right to the water which he proposes to convey.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

WILD AND SCENIC RIVERS ACT

The Bureau of Land Management may require the execution of special stipulations, including a no-surface occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface occupancy stipulation in a scenic area, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Robert L. Healy, 35 IBLA 66 (May 12, 1978)

WILD AND SCENIC RIVERS ACT--Continued

A stipulation prohibiting drilling and storage of oil on a portion of an oil and gas lease of 160 acres in order to protect an area of a river which is in a study section of the Wild and Scenic Rivers Act is reasonable, without consideration of other factors, where it leaves three-quarters of the lease open to regular activity.

Duncan Miller, 35 IBLA 108 (May 15, 1978)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. Land within one-quarter mile of the bank of the Illinois River, Oregon, a river designated in sec. 5(a) of the Act as a potential addition to the system, is withdrawn from mineral entry and therefore, not available for mining claims.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. Oil and gas lease offers within area proposed for inclusion in the wild and scenic river system may be rejected to protect such areas.

The Bureau of Land Management may require the execution of special stipulations, including a no-surface-occupancy stipulation, to protect environmental and other land use values, as a condition for issuing an oil and gas lease. Where the Bureau of Land Management, in a decision requiring a no-surface-occupancy stipulation along a proposed wild and scenic river corridor, has considered all information available to it, has adequately weighed the factors involved, and the appellant has not shown sufficient reason to change the result, the decision will be upheld.

Dean W. Rowell, 37 IBLA 387 (Nov. 6, 1978)

WILDLIFE REFUGES AND PROJECTS

GENERALLY

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

Antoinette Carter, 37 IBLA 222 (Oct. 12, 1978)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a State's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

Janelle R. Deeter, Gary B. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

A mining claim or millsite located on land at a time when the land is withdrawn from mineral location is properly declared null and void.

Floyd G. Brown, 35 IBLA 110 (May 15, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

Withdrawal of public lands for the use of a Federal agency is within the discretion of the Secretary. An application for withdrawal conveys no vested right, unlike an entry under the Public Land Laws which entitles the entrant to issuance of patent upon satisfaction of statutory requirements.

The words "withdrawn" and "reserved" are frequently used interchangeably and in conjunction with each other, and cannot be distinguished with separate precise meanings.

Withdrawals and reservations under the authority of the Pickett Act, 43 U.S.C. § 141 et seq. (1970), are of a permanent, continuing nature in that they remain in effect until revoked by the President or by Act of Congress.

There is a legal distinction between the administrative segregation of land under application for withdrawal, pending action on the application, and the completed withdrawal itself.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

Objections raised on appeal to the Interior Board of Land Appeals to the merits of withdrawal of public lands in order to protect recreational, historical, and geological values in public lands along the North Platte River, will not vitiate its effect as a bar to the availability of the lands under the desert land laws, as it is not within the Board's function or authority to take the steps necessary to revoke the withdrawal, restore the lands to the operation of the public land laws, and classify it as suitable for disposition as a desert land entry.

Cecilia J. Cuin, 36 IBLA 250 (Aug. 15, 1978)

Where a decision rejects an application for an Alaska grazing lease because of an asserted Secretarial policy against granting such applications for land withdrawn pursuant to sec. 17(d)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(d)(2) (Supp. V, 1975), but the record on appeal is incomplete with respect to

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

the existence of such policy, the record should be remanded for further documentation.

Kenneth H. Bunch, 37 IBLA 346 (Oct. 27, 1978)

The inherent authority of the President to withdraw land from all forms of appropriation under the public land laws, including the mining laws, for the use of the War Department for military purposes was not limited by the Act of June 25, 1910 (the Pickett Act), which was also authority for the withdrawal, but which refers only to temporary withdrawals.

10 U.S.C. § 2669 (1976) authorized the Secretary of a military department to grant an easement for a right-of-way over land permanently withdrawn or reserved for the use of that department and other land under his control. This language was all-inclusive and permitted the Secretary of the Army to issue a revocable permit for a pipeline over land withdrawn for the use of the Army regardless of whether the withdrawal be permanent or temporary.

Under the procedures in effect prior to the passage of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 43 U.S.C. § 1701 et seq. (1977 Supp.), the revocation of a withdrawal or the restoration of withdrawn land to the public domain requires publication of a duly authorized Public Land Order. However, relinquishment of administrative jurisdiction by an administering agency to the BLM does not, in and of itself, result in either a revocation or restoration, and acceptance by BLM of accountability and responsibility is controlled by the procedures outlined in 43 CFR Subpart 2370.

Where, pursuant to 43 CFR Subpart 2370, BLM has assumed administrative jurisdiction over lands formerly within the jurisdiction of another agency, the provisions of 43 CFR 2802.3-2 become applicable, and BLM acquires administrative jurisdiction over any rights-of-way then outstanding.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

Riter Ekker, Kerry Ekker, 38 IBLA 277 (Dec. 13, 1978)

Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals were in a lease which expired before the correction of the status of the minerals was made.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

AUTHORITY TO MAKE

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 (1970) providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

The inherent authority of the President to withdraw land from all forms of appropriation under the public land laws, including the mining laws, for the use of the War Department for military purposes was not limited by the Act of June 25, 1910 (the Pickett Act), which was also authority for the withdrawal, but which refers only to temporary withdrawals.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

EFFECT OF

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

Ray L. Virg-in, 33 IBLA 354 (Jan. 18, 1978)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Janelle R. Deeter, Gary B. Deeter, Verna B. Lyons, Harry D. Lyons, 34 IBLA 81 (Feb. 22, 1978)

Victor A. G. Schmidt, 36 IBLA 394 (Sept. 5, 1978)

A mining claim located on land in Alaska at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

Where the Bureau of Land Management records reveal that lands in Alaska have been withdrawn under PLO 5250 and certain of those lands have not been recommended, pursuant to sec. 17(d)(2)(C), Alaska Native Claims Settlement Act of Dec. 18, 1971, 43 U.S.C. § 1616(d)(2)(C) (Supp. IV, 1974), for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems within 2 years of the date of

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

the Act, such lands do not nevertheless become available for appropriation under the mining laws. This conclusion is compelled by the reason that PLO 5250 is based upon E.O. 10355, which not only invokes 43 U.S.C. §§ 141-142 (1970), but also the President's general or inherent authority to withdraw public lands completely from mining location.

Sally Lester, et al. (On Reconsideration), 35 IBLA 61 (May 10, 1978)

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

Roland and Marie Oswald, 35 IBLA 79 (May 12, 1978)

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

Edward L. Macauley, Martha D. Macauley, 35 IBLA 202 (May 24, 1978)

Federal-American Partners, 37 IBLA 330 (Oct. 26, 1978)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

United States v. Milton Wichner, 35 IBLA 240 (May 30, 1978)

The Color of Title Act, 43 U.S.C. § 1068 (1976), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

Frank W. Sharp, 35 IBLA 257 (May 31, 1978)

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by Pickett Act, as amended, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by terms of 43 U.S.C. § 142 providing that withdrawn lands shall remain open to location for metalliferous minerals.

Because of the President's delegation of his nonstatutory withdrawal authority to the Secretary of the Interior by E.O. 10355, the Secretary was endowed with sufficient authority to withdraw lands in issue without reliance upon secs. 17(d)(1) and 17(d)(2) of Alaska Native Claims Settlement Act. Thus, distinctions between those two sections are not herein dispositive of question of Secretary's authority to withdraw lands in PLO 5250.

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

Mining claims located on land withdrawn from such entry are null and void ab initio and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

James Messano, 35 IBLA 383 (June 23, 1978)

Mining claims located on lands within a withdrawal which were not open to mineral entry are properly declared null and void ab initio.

Robert Cornett, 36 IBLA 84 (July 12, 1978)

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

Wilbur G. Hallauer, 36 IBLA 144 (July 26, 1978)

A desert land entry petition-application is properly rejected where the lands applied for therein have been withdrawn by a public land order to protect recreational, historical, and geological values in public lands along the North Platte River.

Cecilia J. Cuin, 36 IBLA 250 (Aug. 15, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A geothermal lease offer filed for lands which are withdrawn for the Department of Defense from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, is properly rejected. Where an offer to lease lands for geothermal resources cannot be accepted because the lands are withdrawn and not available for leasing, the offer will be rejected and may not be held in suspense until the land may become available for such leasing.

Sulphur River Exploration, Inc., 36 IBLA 307 (Aug. 21, 1978)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to cognizable occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, an invalid claim cannot be perfected, and appellant has not shown wherein she is entitled to equitable adjudication under 43 CFR 1871.1.

Sandy Fondy, 37 IBLA 48 (Sept. 18, 1978)

Lands withdrawn for a power site reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

J. R. Nesmith, 38 IBLA 357 (Dec. 22, 1978)

POWER SITES

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

Raymond C. Gardner, et al., 34 IBLA 179 (Mar. 14, 1978)

Lands withdrawn for a power site reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States and subject to the conditions in the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Robert D. Upton and William C. Neils, 38 IBLA 90 (Nov. 15, 1978)

RECLAMATION WITHDRAWALS

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS--Continued

consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

Raymond C. Gardner, et al., 34 IBLA 179 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Dallas C. Qualman, et al., 36 IBLA 119 (July 25, 1978)

REVOCATION AND RESTORATION

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration; however, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to propose terms and conditions to protect the Government's interest.

G. W. Daily, 34 IBLA 176 (Mar. 14, 1978)

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

Raymond C. Gardner, et al., 34 IBLA 179 (Mar. 14, 1978)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Edward J. Connolly, Jr., 34 IBLA 233 (Mar. 27, 1978)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

Appellant may not use appeal to Board or request for hearing under 43 CFR 4.415 as vehicle for petitioning Secretary of the Interior to have withdrawal revoked and land restored to entry.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

Under the procedures in effect prior to the passage of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 43 U.S.C. § 1701 et seq. (1977 Supp.), the revocation of a withdrawal or the restoration of withdrawn land to the public domain requires publication of a duly authorized Public Land Order. However, relinquishment of administrative jurisdiction by an administering agency to the BLM does not, in and of itself, result in either a revocation or restoration, and acceptance by BLM of accountability and responsibility is controlled by the procedures outlined in 43 CFR Subpart 2370.

Alaska Pipeline Co., 38 IBLA 1 (Nov. 8, 1978)

Regardless of whether lands have been withdrawn from leasing and later restored, or were not withdrawn, an over-the-counter oil and gas lease offer must be rejected where the land involved was formerly embraced in an oil and gas lease which has expired by operation of law and has not been placed on the list of lands available for the filing of simultaneous oil and gas lease offers under 43 CFR Subpart 3112.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

SPRINGS AND WATERHOLES

Executive Order No. 107 of Apr. 17, 1926, withdrew from appropriation all waterholes on public lands, and a purported right to appropriate water from the spring that postdates the withdrawal is without effect.

Broken H. Ranch Co., 33 IBLA 386 (Jan. 26, 1978)

WORDS AND PHRASES

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Virginia L. Jones, 34 IBLA 188 (Mar. 21, 1978)

"Other related products." "Other associated deposits." When sodium or potassium brines are covered by leases conveying the exclusive right to mine and dispose of sodium compounds and other related products or potassium compounds and other associated deposits, the leases convey the exclusive rights to all minerals dissolved in the brine, including lithium.

"Leasing Act minerals." The Multiple Mineral Development Act, 30 U.S.C. § 524 (1970), reserved all Leasing Act minerals to the United States, and no rights to deposits of Leasing Act minerals are open to location under the mining laws under 30 U.S.C. § 525 (1970). "Leasing Act minerals" is defined as "all minerals which, upon Aug. 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder." 30 U.S.C. § 530 (1970). Because leases for sodium, potassium, and "other related products" are authorized pursuant to 30 U.S.C. §§ 262, 282 (1970), "other related products"

along with sodium and potassium fall within the category of Leasing Act minerals which include lithium which is dissolved in a sodium or potassium brine.

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed of under sodium and potassium leases must be imposed on the "gross value of the sodium (or potassium) compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market, and in general, no deductions may be allowed for costs incurred in developing a product to a marketable condition except for the price of reagents which are chemically combined with the product sold from the lease.

Foote Mineral Co., 34 IBLA 285 (Apr. 17, 1978)
85 I.D. 171

"Subject to appropriation by him." The provision in 43 CFR 2511.4-2(a) permitting credit for residence and cultivation by a homestead entryman before the date of entry if during that period the land was "subject to appropriation by him" does not refer to land for which there were prior-filed homestead applications which are subsequently withdrawn or rejected. Therefore, until action is taken on prior-filed applications, final proof filed by a junior homestead applicant should not be rejected merely because the land is subject to the prior applications.

John R. Dean, 34 IBLA 330 (Apr. 26, 1978) 85 I.D. 81

"Date of location." Date of location of a mining claim is no later than the date on which the claimant certified he had complied with all requirements of law, as indicated by his signature on the notice and certificate of location. The date of recording the location notice of a mining claim in the county records has no bearing on the "date of location" of the claim, from which the 90-day period for recordation in BLM under FLPMA begins.

Ronald Coulam, 35 IBLA 35 (May 8, 1978)

"Ejusdem generis." The ejusdem generis rule of construction may not be invoked to exclude gravel from the scope of a reservation of "all the coal and other minerals" in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), because this rule of construction can only be effectively applied where there is a series of specific terms which define a class so that one may construe a general term by reference to that class.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Western Nuclear, Inc., 35 IBLA 146 (May 22, 1978)
85 I.D. 129

"Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and

the Department is without authority to consider a petition for reinstatement of the lease.

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

"Rural Electrification Administration projects." A right-of-way holder is not excused from payment of rental under 43 CFR 2802.1-7(c), by virtue of holding an REA loan, where such holder is neither a cooperative or nonprofit organization.

Continental Telephone of the West, 35 IBLA 279 (June 2, 1978) 85 I.D. 186

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

Full Circle, Inc., 35 IBLA 325 (June 19, 1978)
85 I.D. 207

"Subject to valid existing rights." The Secretary of the Interior in making withdrawals "subject to valid existing rights" in PLO 5179 and PLO 5250 intended exceptions to withdrawal to apply in behalf of only those claimants who themselves held such valid rights at time of withdrawal. The Secretary did not intend existence of another's valid rights on withdrawal date to restrain withdrawal so as to allow a topfiling claimant to enter pertinent lands after withdrawal date and independently establish rights under mining laws.

Harry H. Wilson, 35 IBLA 349 (June 19, 1978)

"Valid Existing Right." An application for modification of a coal lease filed prior to enactment of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C.A. § 203 (Supp. 1977), is insufficient to establish a "valid existing right" excepted from the acreage limit on lease modifications imposed by the amendment.

Nevada Power Co., 36 IBLA 62 (June 30, 1978)

"Withdrawn" and "reserved." The words "withdrawn" and "reserved" are frequently used interchangeably and in conjunction with each other, and cannot be distinguished with separate precise meanings.

"Segregation." "Segregation" is an administrative procedure preliminary to favorable or unfavorable action on a withdrawal application by the Secretary of the Interior in the exercise of his delegated authority under the Pickett Act, 43 U.S.C. § 141 et seq. (1970), and is not legally equivalent, in its effect on the

WORDS AND PHRASES--Continued

status of the land, to a completed withdrawal or reservation.

Appeal of Paug-Vik, Inc., Ltd., 3 ANCAB 49 (July 5, 1978) 85 I.D. 229

"Interest." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the service is authorized to act as his exclusive representative in the sale of any lease rights obtained by him, and he is required to pay the service a set commission plus a percentage of revenues derived from any retained royalty interests, on any such sale, the leasing service has an enforceable right to share in any profits which may derive or accrue from the lease and, therefore, has an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Marty E. Sixt, 36 IBLA 374 (Aug. 31, 1978)

"Interest." Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the first $8,000 of the proceeds from any sale of a lease goes to the individual, the next $3,500 goes to the leasing service, and the balance of the proceeds goes to the individual, the leasing service has an enforceable right to a defined share in profits which may derive or accrue from the lease, and, therefore, has an "interest" in the offer as defined in 43 CFR 3100.0-5(b).

Gertrude Galauner, 37 IBLA 266 (Oct. 19, 1978)

"Payment." A noncompetitive oil and gas lease on which there is no well capable of production in paying quantities terminates by operation of law for failure to pay the annual rental on or before the due date. A check for rental does not constitute payment until it is received at the proper office.

Gretchen Capital, Ltd., 37 IBLA 392 (Nov. 8, 1978)

"Interest." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/ corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract, due to the partner's/officer's/ associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

Johnnie B. Gryder, 38 IBLA 146 (Dec. 5, 1978)

"Reasonable diligence." Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the Bureau of Land Management and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. § 188(c) (1976) because there has been reasonable diligence on the part of lessee.

Lillie Belle Higgins, 38 IBLA 254 (Dec. 8, 1978)

WORDS AND PHRASES--Continued

"Withdrawn" and "restored from a withdrawal." Lands or minerals in lands were not "withdrawn" and "restored from a withdrawal" as those terms are used in the public land laws merely because an erroneous title opinion that the minerals are not owned by the United States is corrected to reflect that they are owned by the United States, and the oil and gas simultaneous filing procedures are applicable where those minerals were in a lease which expired before the correction of the status of the minerals was made.

David A. Provinse, 38 IBLA 347 (Dec. 22, 1978)

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